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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

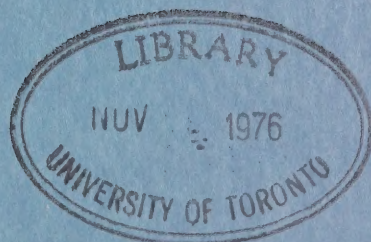
M E E T I N G

held at

The Frost Building, Queen's Park,  
TORONTO

on

FRIDAY, MAY 19TH, 1967



VERBATIM REPORT OF PROCEEDINGS



ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th Floor,  
Frost Building, Toronto, on Friday, May 19, 1967.

PRESENT:

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Prof. A. Brady

Prof. D.G. Creighton

Dean R.M. Dillon

Dr. E. Forsey

Prof. P.W. Fox

Dean W.R. Lederman

Prof. R.G. McKinnon

Mr. C.H. Nagano, C.M.

Prof. J. S. ...

Prof. E. McWhinney

Mr. J.H. Perry

Mr. R.W. Seguin, C.M.

Prof. T. Symons

Mr. D. Stevenson

Mr. R. Farrell

Mr. C. Beer

Mr. S. Posen

Mr. P. Vanton

Government  
Publications

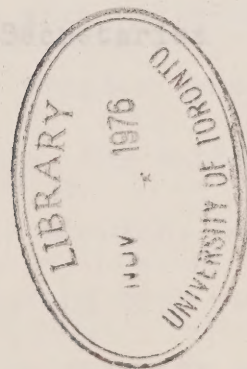
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Prof. R.C. McIvor

Mr. C.R. Magone, Q.C.

Prof. J. Meisel

Prof. E. McWhinney

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Prof. T. Symons

Mr. D. Stevenson)

) Co-Secretaries

Mr. R. Farrell )

Mr. C. Beer

Mr. G. Posen

Mr. P. Venton



--- At 9.45 a.m.

THE CHAIRMAN: I am sorry to be detained for a moment. The item for the agenda this morning was a discussion or an extension of the discussion of the Federal Capital District. Once again, we are grateful to Mr. Palmer for coming along to discuss this matter with us.

Briefly, as you know, Bill, we had the Rowat study done for us, which came along last Autumn and he met with the Committee in December. We have had some further discussions in the staff here and in the Committee, and we have done a little further work on matters such as the economic implications of this proposal.

Since the background papers of the Committee were published, including Professor Rowat's report, as you know, there has been further discussion in the press and in public. We have been considering this question in conjunction with, although at the same time separate from, the broader question of bilingual districts in Ontario, the matter you discussed with us at the last meeting, and a number of points now arise in connection with our consideration of this question from the point of view of Confederation.

Most of these considerations are well known to you. One of the principal considerations, I think, is how this question is viewed from the point



of view of municipal administration, from the point of view of the plans of your Department and the thinking of your Department on the future of the Ottawa district.

Don, I have just given a brief account of the background to the meeting this morning. I don't know if there are any particular questions you wanted to introduce to the discussion now for Bill Palmer.

MR. STEVENSON: I would think if we could ask Mr. Palmer to describe in somewhat greater detail the proposal put forward by the Minister of Municipal Affairs in Ottawa in February, perhaps some of the reaction to it, this is the side I think of the proposals which the Committee is not as familiar with as the other proposals that have been made, although a copy of Mr. Spooner's presentation was sent around.

I noticed, for instance, in your departmental estimates of last week that the question did come up in respect to a question from Mr. MacDonald. Mr. Spooner said very clearly that insofar as government policy was concerned, the statement that he made in Ottawa on February 1st is certainly the government position, and that the Rowat report, which I think Mr. MacDonald was trying to draw him out on ---

MR. PALMER: Yes.

MR. STEVENSON: Is certainly just so far



a project of the Advisory Committee and one which has not been brought into the general ---

MR. PALMER: At this point it is just a report.

MR. STEVENSON: Right.

MR. PALMER: I do not know that I can enlarge on the details of the proposal of the Minister which he made in Ottawa, I think, on February 1st. I expect the Committee is aware that a study was commissioned in 1963 and Murray Jones undertook it. There was not a very appreciative response from the municipalities.

As a result of this, the Minister made another proposal to the municipalities on February 1st. At that time he proposed a metropolitan form of government for the area. Had the members all been provided with a copy of the Minister's statement at that time?

MR. STEVENSON: Yes, they were, but this is quite some time ago. I am not sure how much of it they may have right now.

MR. PALMER: I have a copy here. He said at one point:

"Speaking generally, it must be said  
"that while a large majority of the  
"submissions made following the report  
"appear to support the view that some  
"major changes in the existing local  
"government structure are necessary,



"there has been a conspicuous lack of  
"agreement with respect to the nature  
"and extent of the changes required.

"As far as can be judged from the submissions  
"received from both local and departmental  
"sources, the general reaction to the  
"drastic recommendations made by the  
"Commission has certainly not been  
"favourable."

As a result of that he went on to make a  
proposal for a two-tier system of municipal  
government, consisting of a regional council and  
local municipalities, to more effectively serve  
the residents in the study area.

"The Regional Council would be composed  
"mainly of members of local councils,  
"ex-officio, with direct representation  
"from some rural areas where two or more  
"municipalities may be combined into an  
"electoral district."

The reason for combining some of the rural  
areas was because some of the municipalities had  
populations of less than a thousand, and if we  
were going to have any semblance of "rep. by pop."  
we had to combine some of the lesser populated  
municipalities to even warrant representation by  
one member on the regional governing council.

The Minister further proposed that there  
will be no alteration of municipal boundaries or



compulsory consolidation of two or more municipalities at this time.

I think those last three words are quite important. It took ten years in Metropolitan Toronto to get a change in municipal boundaries, and I think it is a matter of conditioning and education to bring the people in the area to the state of mind where they will accept the change.

PROF. CREIGHTON: If I could interrupt, Mr. Chairman, could I enquire of Mr. Palmer whether in fact this was Mr. Jones' disposition to rearrange municipal boundaries, and that was the principal cause of the dislike of his plan?

MR. PALMER: That I think is one of the main problems. The other one, of course, was the fact that the junior governments under the Regional Council, which had very limited powers, were not going to be very effective.

The Minister went on to indicate what functions he thought should be under the jurisdiction of the Regional Council initially. They included arterial streets and roads, welfare services, administration of justice, water supply and major distribution, major sewage works, regional planning, assessment and taxation and finance.

Education was a matter that he was not too definite on because this would have to be worked out with the Department of Education officials, and as at February 1st I understand nothing definite had



been worked out with them. However, I would expect that elementary and secondary education in the area would probably come under a single Board of Education - with the exception of Separate Schools, where it would also be hoped, I would think, that the Separate Schools would have one Board to administer the area. However, this is a little bit out of my field and I am only guessing at this point.

As to the constitution or composition of the Regional Council, it was proposed that there would be 27 members with the majority, of course, coming from the City of Ottawa by reasons of population; 16 from Ottawa, 2 from Eastview, 1 from Rockcliffe Park, 2 from Nepean, 1 from Gloucester, 1 from the Townships of Fitzroy, Torbolton and Huntley, 1 from the Townships of March, Gouldbourn and the Villages of Stittsville and Richmond, 1 from the Townships of North Gower, Osgoode and Marlborough, 1 from the Township of Cumberland, and then a Chairman to be elected by those members.

PROF. BRADY: Is there any kind of consensus, Mr. Palmer, amongst the municipalities as to what they actually want? Is there any kind of consensus with respect to their response to Mr. Spooner's proposal?

MR. PALMER: We have not had very much response yet to the Minister's proposal as of February 1st, but I understand that they are coming



in, and we expect that we would have them all in this summer.

Insofar as the Jones report is concerned, they were almost unanimously opposed.

As Professor Creighton indicated, the main reason, I think, was the fact that a lot of municipal boundaries were going to be eliminated - a loss of identity, I think is the big problem there.

MR. MAGONE: Bill, were those answers from the members of the Council of the various municipalities, not from an individual survey of individuals?

MR. PALMER: Mainly from Councils, Mr. Magone, but there were other public bodies that made submissions. Anyone that had an interest was free to make a submission.

PROF. CREIGHTON: Mr. Palmer, Mr. Chairman, might be interested to know that we have a report which was sent out, distributed fairly recently, reviewing the results of two questionnaires taken in the Ottawa region, inviting answers to the question: "What would you prefer to have happen with respect to the organization of government of Ottawa and its region?". One was taken, I believe, the second one, after Mr. Spooner's speech on February 1st, and this seemed to indicate a growing preference for the metropolitan area idea. I think, if I remember correctly, those who voted in favour of federal district or an eleventh province, totalled



31 per cent, and those voting for metropolitan district 30 per cent, something like that. Actually those voting for metropolitan area were slightly larger than those voting simply for a federal district.

MR. PALMER: That is very interesting. I wonder if this is going to be reflected in the submissions made by the municipal Councils. I suspect probably it would, because the two tier form in any event is going to preserve the local government structure in the area, and therefore continue the careers of the elected representatives.

PROF. CREIGHTON: Mr. Rowat said in the results of his interview of new lift officers, on these two questionnaires, that they seemed to indicate that there was a stronger sentiment in favour of the federal district than the actual present local government seemed to imply, but in the light of that second questionnaire one's doubts are there, I think, about the validity of that generalization.

MR. PALMER: I personally have always been somewhat suspicious of the supposition that the elected representatives reflect the will of the people on all questions.

MR. MAGONE: That is a heresy.

MR. PALMER: I appreciate that. I emphasized that that was my personal opinion, sir. It is not necessarily the view of the Department, the official view.



THE CHAIRMAN: The two tier system, it seems, has a number of advantages when you get a thing like the Eaton's Centre, for example, where each one can blame the other fellow.

MR. MAGONE: I got the impression that one of the samplings was not a very large sampling.

PROF. CREIGHTON: No. 14,000 questionnaires sent out and a few thousand came in.

MR. MAGONE: Yes, and the other one was even fewer than that.

PROF. CREIGHTON: I do not think you can rely very much on the result of the questionnaires. In any case, one important consideration which we ought to bear in mind, the federal district was not coupled with the word "bilingual" federal district aspect. They were simply asked whether they preferred a Federal District or metropolitan form of government. They were not asked if they favoured the federal district with the word "bilingual" tacked on to it, so that particular question remains in complete obscurity.

MR. PERRY: I wonder, was anything said in Mr. Spooner's recommendation about the relationship with the Federal Government?

MR. PALMER: No, I think Mr. Spooner assumed that that relationship with the Federal Government would be the same as it is now. In other words, there is really no relationship other than co-operation -- financial, yes, to quite a considerable extent in the form of federal grants



on Crown property.

MR. PERRY: But in a way this eliminates one of the really most complicated areas of question in the Ottawa situation, that is, the relationship between local municipalities and the Federal Government. It doesn't eliminate it -- it just doesn't approach it.

MR. PALMER: The Federal Government's main concern, I should think, in that area, would be that of planning. It has proposed that planning be on a regional basis. Therefore the Federal Government would have only one planning board to deal with, rather than a number of boards as at the present time, some of which are not functioning very effectively.

MR. PERRY: Of course, as you know, some of the federal district plans that have been rumoured would go much further than that, when they are put in effect.

MR. STEVENSON: Mr. Chairman, I wonder if it might be appropriate just to read a sentence from Mr. Spooner last week when he was asked by implication a question about relations with the Federal Government, and then I might ask Mr. Palmer a question.

He said, Mr. Palmer, in the Legislature last week, the following:

"There is a possibility that the Federal Government, through the National Capital



"Commission, could be of a great deal of  
 "assistance to the two communities, and  
 "their surroundings of Ottawa and Hull  
 "for creating or assisting in creating  
 "what would be to all intents and purposes  
 "a very beautiful national capital.  
 "I think all Canadians are in favour of  
 "that but to say that you would set up  
 "what would be --"

he says "thirteenth" but I guess he meant "eleventh"

" --- province, I doubt very much whether  
 "that will occur in our day."

PROF. CREIGHTON: What is one or two among  
 friends?

THE CHAIRMAN: He was just thinking  
 we might be unlucky.

MR. STEVENSON: " I doubt very much  
 "whether that will occur in our day."

Mr. Palmer, at a meeting which we had and at which  
 most of the members of the Advisory Committee were  
 present, with some civil servants from Quebec,  
 the approach came up from one of the Quebec people  
 that Ontario and Quebec together might press for  
 direct representation on the National Capital  
 Commission, so that in a sense you have a direct  
 representation from the three governments really  
 controlling many of the decisions which do take  
 place in the formation of a National Capital Commission  
 policy. Has that ever been considered, or would



you have any comments on the idea yourself of Ontario representation on the National Capital Commission?

MR. PALMER: No, I haven't considered it, but I think certainly the provincial view expressed on the Commission would be an asset in the event that regional government does go through, and representation could come the other way. There is no reason why members of the National Capital Commission could not sit on the area planning board, the regional planning board, and you have representation both ways - at least you have communication.

PROF. BRADY: It would probably enlist, would it not, the interest of the provinces and provincial departments if they had representation on the Commission.

MR. PALMER: Yes, I quite agree.

MR. STEVENSON: Do you feel now that there are problems -- you see, the contacts between the Department and the National Capital Commission are pretty sparse, but do you feel that there are actually problems of different policies? I know there often have been between the local municipalities and the Capital Commission but has this ever extended to Capital Commission and provincial differences?

MR. PALMER: I do not think so far as our department is directly concerned. We are



concerned with the municipalities, and there have been differences between the municipalities and the National Capital Commission, of course, everyone is aware of this, and our interest is with the municipalities; but as a department specifically, no, I don't think we have had any differences with them at all. Our relationship has always been very good. Our relationship is not close; it has been spasmodic.

MR. STEVENSON: Is there any quarrel in the Department with the expropriation power of the National Capital Commission? This has raised a fair bit of heat in Quebec, for instance.

MR. PALMER: No, we have never quarrelled with them. It is a senior government, and we have always accepted the fact that the senior government had a right of expropriation. Certainly expropriation where it is reducing the tax base of the municipality is a problem, creates financial problems within the municipalities. This is a concern, but the principle I do not think has ever been questioned as far as we are concerned.

PROF. CREIGHTON: This essentially was the result of the massive expropriations for the green belt, was it not?

MR. PALMER: It may have been, although as I understand it, the green belt for the most part is tenant-occupied, and the municipalities can then assess and tax the tenants, so that they are



not really losing taxation; but where the property is expropriated, held for federal purposes, then it is sterilized for tax purposes; but if the Federal Government will then in turn rent back to the original owner or some other tenant, the municipality then has the right to assess and tax the tenant.

PROF. BRADY: Mr. Palmer, supposing a federal territory was established, would it have serious implications for other municipal areas in the Ottawa Valley that would not be in the territory? In other words, you have in Ottawa a community that is spreading out in satellite municipalities and becoming more populous and probably this process will continue, (we cannot tell) into the indefinite future.

Now, if you marked off one section as federal territory where the treatment of the municipalities would be very different with the spending of money and so on, it would be indeed on a different plane perhaps, but would that in your opinion perhaps have unfortunate consequences for the municipalities outside that were still under the Department of Municipal Affairs of the Province of Ontario?

MR. PALMER: It may well be in the long range, as the area perhaps for a federal district (if I may use that term) becomes built up, development is going to spread outside. As soon as the communication lines were improved, that is, better



highways, probably a commuter service or something of that nature, then we are going to have dormitory municipalities outside that area again, and this is on the assumption that the area is going to continue to grow.

PROF. CREIGHTON: Our French-Canadian friends when we met them in January, made exactly this argument, that from their view Hull is essential in their plan for the economic, social development of northwestern Quebec and they did not want to see it taken over and put into any other jurisdiction.

In other words, this is a request to see what you think about the same kind of development in Ontario. There was a letter a few days or a week or ten days ago in the Globe and Mail arguing exactly in this way, that to take Ottawa and make it into a federal territory would rob eastern Ontario of potential avenues of economic and social development.

MR. PALMER: Yes, I quite agree that Ottawa, of course, is the main educational, economic and cultural centre of eastern Ontario, and certainly would be a definite loss, I would think, although I would hope that there would be no boundary, of course, and the people would still have free access to Ottawa.

PROF. CREIGHTON: Nowadays you aren't quite sure about statements like that.

PROF. FOX: Mr. Palmer, I would be interested in knowing just what your views are about



the advantages and disadvantages of metropolitan government for Ottawa. Are there peculiarities in the Ottawa situation that add to the large advantages and disadvantages of having a large metropolitan arrangement, or are they just really a repetition of the problems you have got in Toronto or Hamilton or anywhere else?

MR. PALMER: I think the problems are pretty much the same as in any other large urban areas. The only distinctive condition in the area, of course, I think, would be the fact that their main industry is federal government and federal property.

The local government system, of course, is to provide services to the people in the area, and I do not think the services required differ very much there from anywhere else. If there are certain services (and we are quite confident that there are) that could be provided more efficiently and more economically over a larger area, then there are benefits to be gained.

PROF. FOX: There is no particular greater degree of extremity between economic incomes in the various units that would make up the metropolitan area, than there would be anywhere else?

MR. PALMER: I don't think so. As far as I recall, the income level in Carleton-Ottawa is fairly high as compared with other parts of the province.



MR. VENTON: About 9 per cent, I believe.

MR. PALMER: Above the provincial average?  
It is high then, fairly high.

PROF. FOX: And this is fairly uniform.  
You do not get into the sort of problem of combining a wealthy sub-unit with a very impoverished sub-unit in a metropolitan structure of government, where services would have to be run towards some more impoverished area, in which case you would arouse antipathy in the wealthy area?

MR. PALMER: I do not think that would occur too much in Ottawa. The less wealthy areas are, for the most part, rural, I think.

PROF. FOX: That is what I was wondering.

MR. PALMER: They would not require the hard services immediately, this is, sewers, water, paved roads, curbs and so on.

PROF. SYMONS: Just on the income, if I may correct Mr. Venton by quoting an even more learned authority - Mr. Venton, the income per family is about 17 per cent higher in Carleton than for the province by and large. I think actually Peter's own research turned that up, so it is an appreciable factor, is it not?

MR. PALMER: Yes, it is.

MR. PERRY: I was going to ask how you rated Ottawa in terms of municipal priorities in Ontario. There are several metropolitan areas having these same sort of problems, and yet Ottawa



seems to have had a little more attention. Is there any particular reason for it?

MR. PALMER: The regional studies are initiated for the most part through local boards. There has been no regional study undertaken through my Department without request from the municipalities in the area concerned, and Ottawa came in first.

MR. PERRY: In your own view is the situation any more serious there than, say, in Hamilton, Windsor or London?

MR. PALMER: No, I do not think that it is really more serious. I feel that some of the municipalities in Carleton need help quickly in order to get some control over the development in the area. I feel that a regional form of government could accomplish this.

Now, this is serious to the extent that this is the federal capital - the showplace of the nation in other words, and something should be done to get control very quickly. Apart from that, however, I see no more urgency there than in some other areas.

PROF. BRADY: That is a pretty crucial one, though, is it not?

MR. PALMER: I quite agree.

PROF. BRADY: From the point of view of Canada.

MR. PALMER: It is the showplace of the nation.

MR. PERRY: I was trying to isolate the



sort of purely municipal factors.

MR. MAGONE: The thing that strikes me from this survey made by Professor Scanlon, this survey was based on a "scientifically selected sample of 80 people". What in the world does that mean? Is this a computer business?

The next thing is that Mr. Lawrence, who made the other survey, sent out 14,000 questionnaires and only 2,000 came back, which indicated to me ---

THE CHAIRMAN: The D.B.S. would be pretty happy with that.

MR. PERRY: They would say that was a terrific return.

MR. MAGONE: I was going to say, it indicated to me that the people did not know what the questions meant.

PROF. McWHINNEY: The citizens or professors did not know what the questions meant?

MR. PERRY: What it really does indicate is that 12,000 people are not interested in this subject.

PROF. FOX: I think there are two things to be said on that. The first is that 2,000 out of 14,000 is a very high rate of return for the questionnaire, extremely high in survey research.

The other is that "80 scientifically selected", who knows that that means, but if it was a sample of the universities, of the population in the area, stratifying by making those selections,



then you can do this; in other words, that small number would be adequate. The Gallup Poll survey only uses 800 for the whole of Canada out of a population of 20 million.

MR. MAGONE: Did Scanlon ask you?

MR. SEGUIN: No. The information I got was it is right around campus.

PROF. FOX: I think the better criticism that Mr. Magone makes is that the people may not have understood. I thought that the second questionnaire that was sent out dealing with the nature of the municipal council and so on, Board of Control, indicated that they may not have understood what the questions really meant. In other words, the questions may be loaded and may have implied things that the interviewers did not want them to imply.

PROF. SYMONS: Mr. Chairman, I was very interested in Mr. Lawrence's questionnaire, and I wrote him and asked him about it and about the procedure by which he had decided on the form of question.

He wrote a very interesting reply, but he anticipated a response of 1 per cent and he was absolutely staggered by the response that he got. He was anticipating he would get 140 or so replies and he was just dumbfounded by the 2,000.

The one firm conclusion that he has drawn from it, he says, is that there is an intense and growing interest in the question but with pretty



profound differences of opinion.

He also said, you remember, on that questionnaire there was one section at the end (which was mercifully brief) where you could write comments. He got some very interesting written comments, one of the chief of which was that he was overpaid as a member of Parliament, but about a quarter of those replying did take the opportunity to write in a comment and they were divided sharply into two groups - those who had a vision of an Ottawa as a bilingual capital for Canada, and those who were very resentful of the French fact. They were polarized into those two.

PROF. McWHINNEY: What was their division, the latter group, was that clear?

PROF. CHANDLER: No, he just said those who were very resentful of the French fact.

A propos of statistical information,

THE CHAIRMAN: / I was at a dinner recently where Lord Amery was speaking, the former High Commissioner in Canada. He said he was very interested to receive recently in the mail a listing of members of Parliament in Britain who had left the House of Commons during the last ten years, "bracket" "broken down by age and sex".

PROF. FOX: I just ask about this Lawrence survey. He is the member for Russell, is he, and he mailed questionnaires only to his own constituents? I mean, what population is he sampling?



DR. FORSEY: A large area.

PROF. FOX: But it would not include the western part of Ottawa.

MR. SEGUIN: No, does not even include Ottawa. It includes Rockcliffe Park, Eastview, the Township of Gloucester, Township of Cumberland, Township of Russell and Township of Osgoode.

PROF. FOX: It is a very selected area.

DR. FORSEY: Very large English population.

MR. SEGUIN: Very large English population.

PROF. McWHINNEY: Constituency would be bigger than that.

MR. SEGUIN: Anybody in Eastview would vote for the federal district. In Rockcliffe we want to be the other twelfth province.

DR. FORSEY: It is a very mixed constituency now, is it not?

MR. SEGUIN: It lost Eastview in the provincial. Racine is going to run in Eastview instead of Bert Lawrence, so it is more English now than French.

THE CHAIRMAN: Does anyone know what the personal views are, both of the members of Parliament and members of the Legislature, who represent ridings that are embraced by the Ottawa district on this question?

MR. STEVENSON: Mr. Chairman, one of the speakers last night, you remember, in the



Confederation Conference debate was Horace Racine the member from Ottawa East, who started off by saying he had spoken before in favour of an eleventh province, but that as far as he was concerned, after reading the Rowat report, he would support it too, but as far as I have heard that is the only member of the Ontario Legislature who has spoken up for either of these two alternatives. From what I have heard, I gather the member from Ottawa West and the member for Russell are both in favour of the fact that this area should remain under Ontario jurisdiction.

DR. FORSEY: I would imagine most of them are sniffing the wind.

PROF. FOX: Mr. Lawrence is going to speak in the Confederation debate, is he not, today? His name was on the list.

THE CHAIRMAN: That is the other Lawrence.

PROF. McWHINNEY: This is the Rosedale.

THE CHAIRMAN: St. George.

MR. PERRY: I think it is fair to ask Mr. Palmer if he has read the Rowat report, and what his appraisal would be of it as an assessment of the municipal problems of Ottawa, apart from the relationship with the Federal Government.

MR. PALMER: It would seem to me that the relationship with the Federal Government was underlying the whole thing.



MR. PERRY: It is very dominant. He  
trend  
has some projection of population/and the extent to  
which everything is going to be happening outside the  
green belt fairly soon. Is this your opinion?

MR. PALMER: Yes, I would agree with that;  
I would not quarrel with him on that subject.

MR. PERRY: The Greber plan, I  
gather, was out of date.

MR. PALMER: Yes, I think it is. There  
are very few plans that are not out of date right now.

DR. FORSEY: I have a French-Swiss friend  
of mine who was telling me that Greber was  
considered in France a fourth-rate man in the field.

PROF. McWHINNEY: The usual definition of  
an expert, Eugene, that he comes from a foreign  
country.

THE CHAIRMAN: I am aware of how generous  
Mr. Palmer has been with his time, which we greatly  
appreciate. I do not want to hold him longer than  
is necessary. Are there any other matters that you  
would like to raise with the Deputy?

MR. PERRY: Just one other thing.  
Apparently Mr. Spooner did deal originally with the  
educational context. Was it in relation to bilingualism  
at all? I am sorry, I read the report of his  
speech.

MR. PALMER: The Jones report?

MR. PERRY: No, Mr. Spooner's proposal  
for Ottawa.



PROF. CREIGHTON: There was none such,  
I do not think.

MR. PALMER: I do not think so.

MR. PERRY: He did not enter that area?

MR. PALMER: I can read what he said about the  
education set-up:

"With respect to the possible re-  
"organization of the existing system for  
"the administration of public elementary  
"and secondary education in this area,  
"I am not in a position to put forward to  
"you at this time definite proposals.  
"I hope that in the near future my  
"colleague, the Hon. W.G.Davis, Minister  
"of Education and his advisers, in the  
"light of their studies of the Commission's  
"report and recommendations, will be able  
"to present to you and particularly to the  
"various school boards a scheme which may  
"be reasonably acceptable and which will  
"be capable of being fitted into the  
"municipal re-organization scheme which  
"I have outlined as it may be modified and  
"refined in the joint discussions which  
"I hope will follow this meeting."

So he has left it entirely up to the Department of  
Education.

THE CHAIRMAN: Any other matters? Bill,  
thank you very much again. You have been very good



to us and we appreciate it.

MR. PALMER: It was a pleasure. Thank you, gentlemen.

MR. PERRY: Ian, I was wondering whether it is fair to ask about Mr. Spooner and his statement of the "13th province" which is not likely to come into being in any of our lifetimes. Has it not settled this issue for us? Could he be regarded as speaking for the Government? I understand this cannot always be assumed with Ministers nowadays.

MR. STEVENSON: He was even stronger, I might say, last week. He said:

"I suggest to you that because  
"of the reaction from Quebec - and I only  
"get that from reading some items in the  
"newspapers - I doubt that in your day or  
"mine or those who are here who are much  
"younger, we will see a national capital  
"that will extend and include parts of what  
"are now lands contained in two separate  
"provinces."

THE CHAIRMAN: Of course, that only takes us up to next October when the election date is.

MR. STEVENSON: He goes on to say:

"I realize that things change. What may  
"appear to be white today is black  
"tomorrow. But as far as I am concerned



"I say to you that the Rowat Report  
"does not indicate the policy of the  
"Government of Ontario. It is not  
"acceptable. It has never been  
"discussed. It was a study commissioned  
"by the Committee on Confederation for  
"their own purposes. What those  
"purposes are, I do not know insofar  
"as this matter is concerned. I am  
"concerned with the re-organization  
"of the municipal government as now  
"constituted in the Ontario  
"municipalities where the national  
"capital is located."

(Page 28 follows)



PROF. McWHINNEY: I do not think that bears the construction that the government has decided against the territory. It is not quite a "Paul Martinese", thank goodness, but it really relates it to public attitudes.

MR. PERRY: Certainly not strong declaration of faith in the national capital.

PROF. FOX: Nor in us.

THE CHAIRMAN: I do not know frankly to what extent this question has been discussed in a broad context by the Government. I think it is well known that Mr. Spooner and Mr. Haskett have very explicit views on the question. Following the publication of the Rowat report and a good deal of questioning of the Government at that time, Mr. Robarts issues a statement in which he simply re-assured the people of Ottawa that no changes would be undertaken there without adequate provision for discussion and consultation with local authorities. That was as far as he went.

PROF. CREIGHTON: That was back in the winter some time.

DEAN LEDERMAN: I would agree with Mr. Spooner to this extent that the attitude in Quebec, both Liberal and Union Nationale, seems to be such that there is not going to be a National Capital Territory with part of Quebec province in it. So the problem does become from our point of view: What do we do on the Ontario side?



MR. SEGUIN: I do not agree with you on that point when you say there will not be anything in Quebec. That is the politician again. Ask the man on the street, ask the man who is going to vote. Look at Oswald Parent, the declaration in Quebec in the House, to the effect that unless something was done by the Quebec Government, they were going to vote for a Federal District. In the City of Ottawa today I will tell you you can be realistic and they will vote for a Federal District. I am sure of that on account of the way the City is being run today -- not necessarily because they think it will be better but they will try a change, I can tell you that.

PROF. McWHINNEY: These are non-nationalist reasons; they are simply municipal government.

MR. SEGUIN: Simply municipal government and the same thing applies to Hull. Hull feels nothing has been spent by the Federal District, and they are of the opinion that some money will be spent if it became a Federal District.

The politicians, as I said before, and the newspapers are opposed to it, but the man on the street, I meet quite a number of them every day and I question them on that, and they would vote for Federal District any day.

The only decent paved streets in the City of Ottawa are those belonging to the Federal Government and everybody knows that. Ask Mr. Forsey



and he will tell you that the only decent buildings we have belong to the Federal Government; the only decent buildings that are being rented are being rented by the Federal Government and everybody knows all that.

So we say: "What is Ontario doing for us?" like the people of Hull say: "What is Quebec doing for us?". They say the same thing.

DEAN LEDERMAN: I accept that, of course, because you know, Roger; but neither <sup>one</sup> group of Ontario citizens in the Ottawa area nor one group of Quebec citizens in the Hull area can take the respective areas out of their respective provinces.

MR. SEGUIN: No, exactly, but the National Capital Commission is going to be revamped, I am pretty sure of that. That is the declaration by Mr. McIlraith himself. He wasn't satisfied with the way they were operating and the re-vamp will come up, I think, and the provinces will have to make concessions or else they are not going to spend the money. I am pretty sure it is going to come to that.

PROF. McWHINNEY: How many Hull members in the Quebec Legislature? Of course, you have marginal voting situations.

MR. SEGUIN: You have got three actually that are in that area; even the Federal Government, from Hull -- not from Hull but from the Gatineau right within that area it is for the National Capital



Territory. Dr. Isabelle, he is for it.

PROF. CREIGHTON: What it seems to me then is that simply the people of the Ottawa region, we are now told, want a Federal Capital District, not for any reason of the national interest.

MR. SEGUIN: No.

PROF. CREIGHTON: But simply because they will get better municipal services at less cost and I am not in favour of giving one inch in support of that.

PROF. McWHINNEY: I thought that was implicit in the Rowat report when we met him. He was emotionally directed, he was after a better administration out of the capital district, but I would not think that disposes of it because his motives are not, let us say, ~~objective~~--

PROF. CREIGHTON: We are supposed to support these people in a superior state ~~exceeding~~ that of the rest of the country. No.

PROF. SYMONS: Is it not a matter of doing something for the people outside this area? Surely, while one must bear in mind the interests of the residents of Ottawa and Hull, the rest of us are interested in this question as Canadians, and in this interest the people living outside are just as important in this matter in some aspects of it, and this is what we are concerned with. If it happens that whatever we decide benefits the people in the area, fine, that is jolly good, but



it is not really why we are doing it.

MR. MAGONE: The interests of people outside that area are purely emotional, surely.

MR. PERRY: I broke my spring once in a pothole in Ottawa. I cannot say this was an emotional experience. It was an expensive one.

PROF. FOX: Your own springs or your car?

MR. PERRY: Me and my car.

PROF. FOX: Mr. Chairman, at the last meeting I raised the question about the report that we received from the Western Regional Economic Council of Quebec under the title of the various members of the Committee, and you will recall I asked Mr. Seguin if he could tell us who these people were, because the report was so opposed to the idea of the National Capital Territory. He started, and then the Prime Minister arrived as he was giving us who these people were, and he never finished it. I just wonder if it is of any interest to members of the group to find out who those people are. I don't know whether we have a list available now. It is contained in the report. I haven't got the report with me.

PROF. SYMONS: Was it at the back or front?

PROF. FOX: Right at the front few pages.

PROF. CREIGHTON: May I ask also, before we go on to it, are you suggesting that we might go and hear the debate at 10.30? It is now past 10.30.



THE CHAIRMAN: All right. May I, Paul, with your permission, make one or two comments about the day. I am sorry I was detained at the beginning of the meeting and I did not want to keep Mr. Palmer waiting further. Perhaps some of you felt your ears burning a little between the hours of three in the afternoon and 11.10 last night, because the Confederation debate was on during that time. There was reference to the work of some individuals here, some reference to the Committee as a whole. The debate is resuming this morning at 10.30 and will take place throughout this morning until 1.00 and, I suspect will go on to next Tuesday afternoon or next Tuesday evening because there are thirty-six speakers have indicated their wish to speak, which is exactly one-third of the Legislature.

MR. STEVENSON: They are now on one-third of the thirty-six.

THE CHAIRMAN: They did what, about eleven people last night?

MR. STEVENSON: Eleven, yes.

PROF. McWHINNEY: You implied, Mr. Chairman, some specific comment on some specific reports by specific people? Is it imprudent to ask you of which?

THE CHAIRMAN: No, just really a light remark in the sense that there is quite liberal quotation from the works of some members of the Committee, and there were remarks both generous



(and I do not want to put this too far) in the other direction. Questioning, shall we say, about the works of the Committee.

PROF. McWHINNEY: Can one ask you or Don for a brief summary? The Globe and Mail I got was very sketchy.

THE CHAIRMAN: Let me say first of all that the debate was opened with a long speech by the Prime Minister and followed by equally long speeches by the Leaders of the two Opposition parties. Both in those formal remarks and in subsequent speakers, I would say that generally speaking the debate was of quite an objective character and quite non-partisan.

At some points I thought the level of reflection and consideration was very good indeed. Mr. MacDonald supported the resolution very strongly, and went further by suggesting an extension of the concept to include a very broad public function by having a teach-in, so to speak, across the province in schools and in communities. He also said that he really felt the Prime Minister could not accomplish his objectives in two days, and that four days at least were required.

Mr. Renwick late last night said he thought at least a week was required.

The Prime Minister certainly has no desire to limit the Conference. His notion of two days was purely based on his experience on how long you



can retain the attention of people with responsibilities such as that group have in any quarters.

The Liberal position was rather interesting. Mr. Nixon, after some conjecture in Queen's Park ~~after~~ the last few weeks about the position they would take bearing in mind the views of the Federal Government, came out in support of it in principle but did criticize the Government through the form of an amendment for the procedure by which the Government had introduced the suggestion, and because of inadequate consultation with and consideration of the Federal Government.

MR. MacDonald came back on that point by saying that he felt in fact there had been no mystery about this at all; that Mr. Robarts had made his intention quite clear at the Federal-Provincial Conference last October, and he had spelled it out quite fully within a few days in a speech in Toronto and more fully a few days later in a speech at Montreal; and that he felt in fairness to the Prime Minister there had been no lack of candour about his intentions throughout.

So that the debate concludes and I do not know, I cannot be certain, from the line-up whether some of the more exciting presentations may take place this morning or next week. It is a little hard to judge. I did feel you might wish to consider whether you would like to go and hear the debate this morning.



Just before I ask for an opinion on that, I might say there are several other things I would like very much to discuss with the Committee today and to receive your views upon.

I would like to know your views on Mr. Pearson's suggestion about the Bill of Rights and the significance you attach to this and in its own terms; and also what relevance you feel it has to the strategy of the whole business of the Confederation of Tomorrow Conference.

I also think that in preparation for the meeting in July, the Prime Minister would welcome some position paper or some formal analysis being prepared for him to assist him prior to that meeting.

I would like to hear some of your views on recent trends both in Ottawa and in Quebec. It seemed to me the Ottawa reaction to the Conference has been rather interesting, and Mr. Stevenson and I perhaps could tell you a bit of what has been going on from our end.

I also think there is an interesting process of what I should describe as a temperature rising in Quebec again. I notice in the last ten days very strong pronouncements have been made on the question of federal interference in transport policy, on the question of federal interference by the suggestion that there might be a Federal-Provincial Conference on community planning and urban



affairs; a very strong statement on TV and film censorship; very strong statements on culture and education and foreign contacts. I think it is not accidental that these have come in that conjunction.

Then I would like to have some discussion of what I really think has ~~been~~ about as the result of the Federal philosophy, a real issue of Confederation, the Federal philosophy to at all costs treat all provinces alike, even if this means Prince Edward Island must always be treated by the Federal Government in the same relationship as Ontario.

I think the proposition that events must not be allowed to proceed in a way that will confer special status as on Quebec, has as a corollary the position that all the other provinces must therefore be treated alike. I think this is really a matter of the essence and will be a matter that Ontario should have some position on prior to the Confederation of Tomorrow Conference.

I would also like to have some views about the proposed meeting of June 23rd to 25th in Kingston.

Finally, I would like to have some guidance on whether you think, as suggested in my letter to you last week, that the Committee might follow on from the production of its three volumes to prepare some kind of report or statement on its work and its views; or whether individuals, particularly individuals



whose work has not been represented in the volumes, might care to prepare a position paper (for want of a better term) on their view of Confederation at this time.

As a matter of fact, Professor Conway has already expressed his intention over the summer to write an essay which would sum up his view of Confederation at this time.

I might say that one of the points that Mr. MacDonald referred to in the debate last night was in reference to my statement in the preface of the first volume, that these were background papers and they didnot necessarily encompass the full thinking of the Committee or all of its members, and he raised the question about what was the thinking of the full Committee or some of its members. Now my thought of this preceded that, as you know, from my letter last week, but it is a matter that has been on my mind.

So those are the set of items I want to discuss in total or in part before the day is out, and of course, they really do all revolve about the agenda item for this afternoon, because they all lead up to the Confederation of Tomorrow Conference.

May I ask, what is the consensus as far as questions will be on now, I suppose, and the debate will be getting going in a few minutes?

PROF. BRADY: Mr. Chairman, I do not think



we should adjourn to go and hear the debate. The debate will be recorded after all. We can read the speeches in due course, and I do not see any urgency for us to go and hear them now, especially as we have plenty on our own agenda to deal with. I think it would be a mistake to adjourn for this purpose.

MR. PERRY: I certainly agree with Alec. We will go over there and then have lunch and it will be two o'clock and people will want to get away at four, so we have a couple of hours remaining.

DR. FORSEY: I suppose the main speeches have already been delivered, haven't they?

PROF. McWHINNEY: Until the winding-up of the debate.

THE CHAIRMAN: The winding-up will not take place this morning, I am sure, and may not take place until Tuesday. The Prime Minister will wind up with a final speech.

PROF. McWHINNEY: I would be interested to hear further in your report, Mr. Chairman, where the points of direct comment on reports were predominantly, because they give a focus on what the Legislature think is important and where their thinking lies in terms of substantive policy results. Was it mainly on the Ottawa Federal District where specific reports ----

THE CHAIRMAN: No, I would say the greatest reference was to two matters: one the constitutional question and the other to bilingual and



French-English relations.

PROF. McWHINNEY: Which aspect of the constitution, Mr. Chairman? Where is the focus occurring? Is it on courts or general policy, associate states, or is it too scattered?

THE CHAIRMAN: It was pretty scattered, and I do not think anyone presented any formal position. I suppose Mr. MacDonald came closest to enunciating a philosophy on the constitution.

MR. STEVENSON: Yes, very much. I think Mr. MacDonald expounded on the general N.D.P. position on Confederation.

PROF. McWHINNEY: The associate states studies especially?

MR. STEVENSON: Yes, I think more bilingualism in Canada but with a special status for Quebec.

PROF. McWHINNEY: I suppose Elmer Sopha is undoubtedly the most sophisticated in the constitutional area.

MR. STEVENSON: He has not spoken yet. He is due to wind it up for the Liberals.

THE CHAIRMAN: And probably, I would say, from looking at his face yesterday, it would be quite a wind-up.

MR. STEVENSON: He is getting quite wound-up now.

THE CHAIRMAN: You see, he has spoken in the strongest terms against the Conference from the



beginning. Now that his leader has approved in principle, it is going to be very interesting to hear his wind-up.

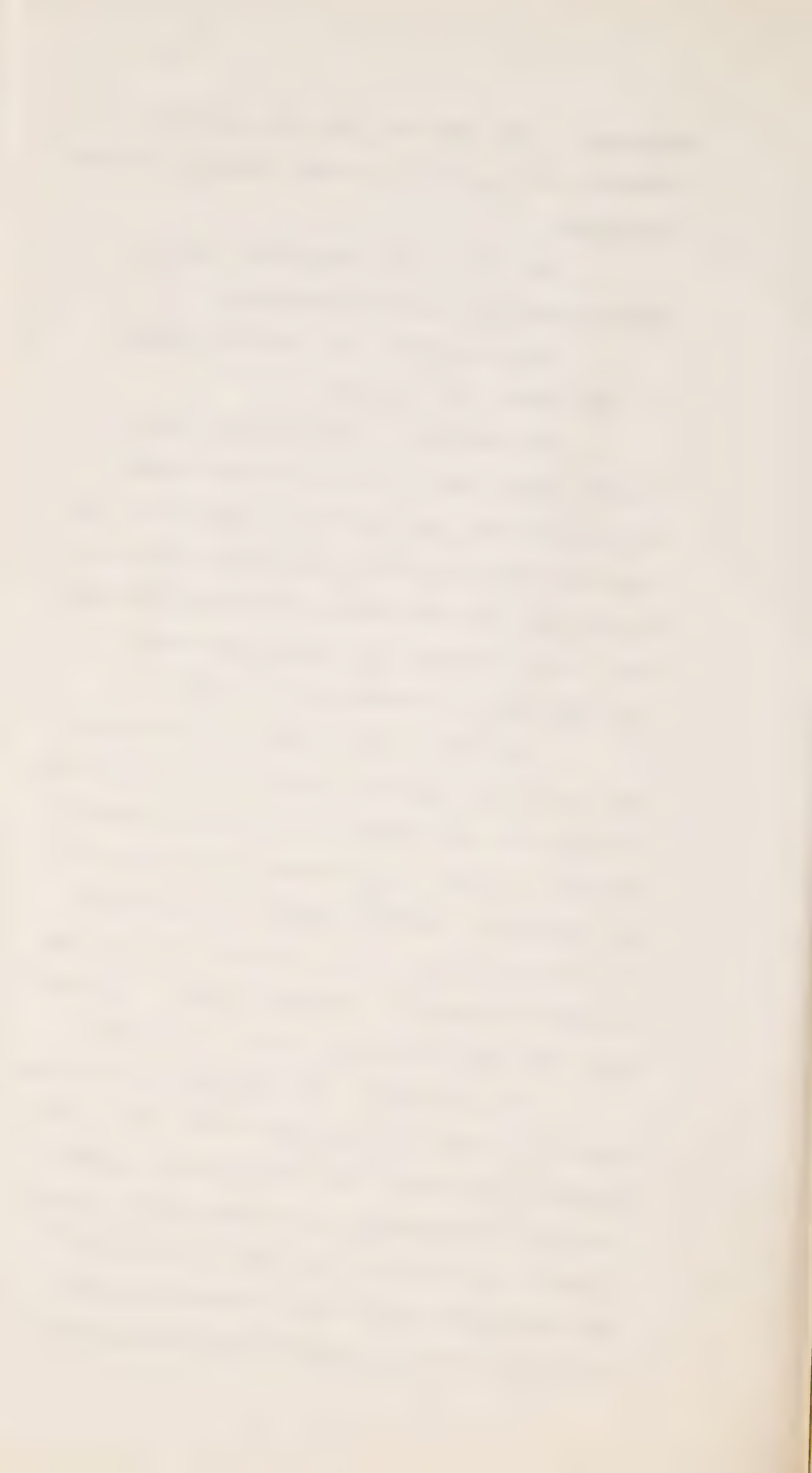
PROF. FOX: The rumour is Mr. Sopha is going to attack Mr. MacDonald violently.

PROF. CREIGHTON: Why does he disagree with his leader, Mr. Chairman?

THE CHAIRMAN: Originally the leader, I think, spoke rather critically of the concept of the Conference, but whatever has gone on in their caucus and their thinking, subsequently this is not the position they have taken in the debate yesterday, but I think the person who did express himself very strongly in their party was Mr. Sopha.

MR. PERRY: If you would like to add one more item to your agenda, I think it is time we began to sharpen up our thinking on this Capital District idea, and at least assign someone to do a paper of some kind on it, drawing together the discussions that we have had up to now. We have been going over the same old issues for six months almost. I do not think they have changed very much in that time.

MR. STEVENSON: Mr. Chairman, just in that connection, some of you may have noticed one of the documents distributed this morning was an excerpt from the vote proceedings of the Legislative Assembly of Quebec for May 10th, which gives a resolution which was passed establishing a special committee of fifteen members to discuss various alternatives



for the Quebec side of the Ottawa area, in the light of things like the Western Quebec Regional Council study, the Rowat report and various statements of different governments and interested people.

THE CHAIRMAN: I take it there is no dissent about remaining here for the morning.

PROF. FOX: I would agree with Professor Brady, maybe because he and I attended the debate yesterday.

THE CHAIRMAN: How did you like it?

PROF. FOX: I think we feel we could have put our time in more profitably here. I assume we will get copies of the Legislature Debates and we can read it all.

THE CHAIRMAN: Absolutely.

PROF. FOX: In view of our agenda, we have too much to do.

MR. MAGONE: I shall waste no time in reading it.

DR. FORSEY: I shall read with interest Mr. MacDonald's statement to see if he is as foolish as he was before.

PROF. McWHINNEY: He may not be wiser but he is better informed. As Chief Justice Nixon used to say after hearing counsel: "I am not wiser but I am better informed after hearing you".

THE CHAIRMAN: In that case I think we should carry on, and first of all conclude our discussion on the Capital District. There are two



points I would take. The first is Professor Fox's question. Secondly, I would concur with the recommendation of Mr. Perry, I think. As he says quite properly, we have discussed this for I think probably longer than six months, perhaps even since last Spring, and my own feeling is that after that interval if we are not able to arrive at some conclusive view we are probably never going to.

PROF. McWHINNEY: This is on the Federal Territory?

THE CHAIRMAN: Yes. In any event, I think the arguments are probably all dancing about in our minds and we should try to marshall them.

PROF. CREIGHTON: What exactly does that mean, Mr. Chairman? Does that mean someone should attempt to write a paper summing up various views and the arguments for and against each one of them, or whether this Committee should attempt to come to some conclusion about the matter, because they are two quite different things.

PROF. McWHINNEY: Consensus rather than conclusion.

PROF. CREIGHTON: If there is a consensus.

THE CHAIRMAN: You might expand.

MR. PERRY: I had not really thought of the first exercise; I ~~think~~ excluding the second one. I think we have to get these views down in more concrete form than they are at the present time; then, on the basis of a paper of that kind, try and



arrive at a consensus.

PROF. SYMONS: I would agree, Mr. Chairman, that I think we need a paper, not lengthy, but a document on all lines, because we have received an assortment of views, data, statements and reports in this matter. I think it needs to be filtered through someone who has been on the Committee while this process has gone on. If we have such a paper, we could then discuss it and respond to it one way or the other.

THE CHAIRMAN: Yes, that as a basis of coming to a ---

PROF. SYMONS: Yes, I do not think the Rowat report is a satisfactory basis for our own discussion of the question.

DR. FORSEY: Too much material since, I think, but Professor Creighton a while ago on the discussion of the Federal District made me feel of the definition of Hell in "Paradise Lost", if I remember correctly. "Fixed fate, free will, foreknowledge absolute and found no end in wandering mazes lost".

I got lost in the wandering mazes long since, and I should greatly appreciate a concise summary of the pros and cons as suggested by Mr. Perry, on which I shall be in a better position at least to make up my own mind. I shall not be wiser, as Mr. Justice Nixon says, but I shall be better informed.



PROF. BRADY: I would suggest that Mr. Perry be asked to ---

MR. PERRY: I foresaw that, I think. Let me say this, I am terribly busy and will be for a month or six weeks, but if this were a matter of having something by the end of the summer, I would be glad to undertake it. This is a fairly old problem. I don't know whether we should worry about another month.

PROF. McWHINNEY: I had the impression listening to the discussion in the last few minutes on this issue, that the lines were fairly clearly drawn, and there was a fairly clear majority one way or the other, if not unanimity. I agree your report will make one wiser but ---

THE CHAIRMAN: What did you feel, Ted?

PROF. McWHINNEY: I felt that the case for having a Federal Capital District had not been adequately proved; and since it requires a change of the existing situation, presumably the status quo remains. The Rowat paper was not convincing, and it was even less convincing under examination, I thought.

Though it may be for different reasons that, if you wish, this situation of holding the status quo seemed to me to emerge, some people might want to hold it for different reasons than others. It would require terribly complex and difficult but not impossible legislative changes, but on balance of pains



and gains, the expenditure of effort required was not balanced by the results demonstrated.

PROF. SYMONS: I think, Mr. Chairman, that Ted is right. There has not been any clear push or feelings as far as I could assess it in our Committee for a National Capital District. I think there has been pretty generally a feeling that it was, though difficult to define, a pretty important question and a question that might at any moment become a hot one; and while on balance at the moment it looks as though our Committee might perhaps leave the question on one side, I wonder if we really can, particularly in the light of the decision of Quebec to establish the Committee of its Legislature on this question.

I think there is a watching brief that has to be held and held actively, and if we could prevail upon Mr. Perry to pull this thing together for us from all the material and views that we have received, I do think it would be a service and I for one would feel I was greatly fortified by having such a brief at hand in the Fall.

THE CHAIRMAN: I should think that whoever does this is going to require time naturally taken out of other things, and if you could undertake this, Harvey, we would all be most grateful, I am sure.

MR. PERRY: With the end of the summer deadline.

THE CHAIRMAN: We would not be meeting in



July and August at least, and I would say perhaps our next meeting would be on September 15th. The two alternatives would be, if it were possible for you to have your report, let us say, two weeks in advance of that date so that members could digest it and discuss it on the 15th; or alternatively, if this is not possible, we could discuss it in October.

MR. PERRY: I will do my best to meet the first suggestion.

THE CHAIRMAN: All right. Does that meet with your approval?

MR. PERRY: Some time during the summer I am going to ask myself how I ever got into this.

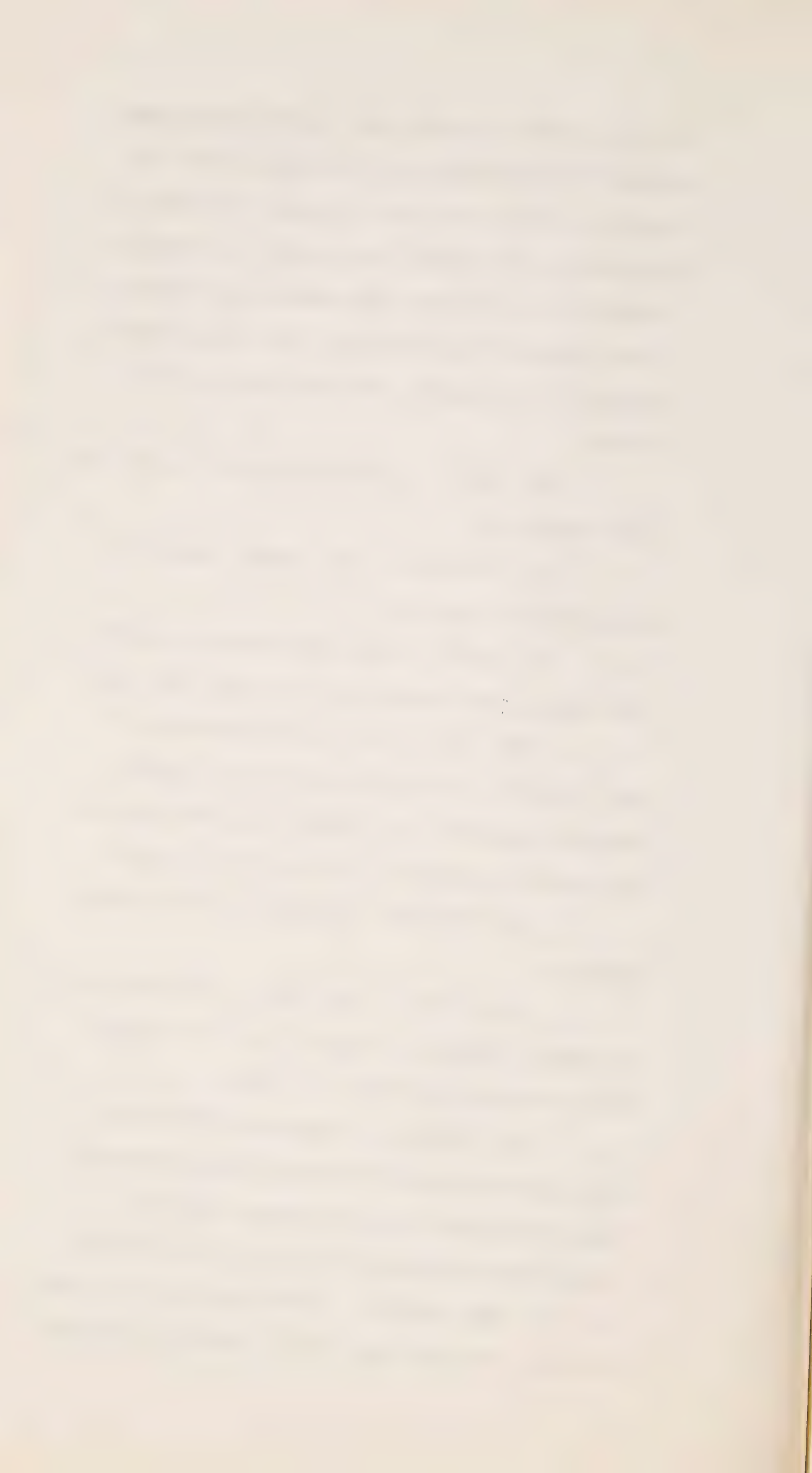
PROF. FOX: May I just suggest that Mr. Perry consider as well as the National Capital District suggestion, the other ideas that arose in the interval, because I think they are relevant.

THE CHAIRMAN: They relate to the whole question.

PROF. FOX: Yes, that if he could err on the side of making it lengthy, it will be better than having just a summary of views.

MR. PERRY: I agree with this part. I think we have tended to look at this too much in forthright terms and there are all sorts of intermediate positions that have to be looked at.

THE CHAIRMAN: If we can have the range of options and positions here, I think it will help



us indeed.

Could we then answer Paul's question before we leave the subject, the question addressed to Mr. Seguin at the last meeting about who were these people who composed the report, who were adverse to the National District question.

MR. SEGUIN: First of all I would like to state that these are white-collar people. They would not be affected one way or the other whether it was Federal District or not. Most of them are fairly well off.

Paul Martineau was the member for Pontiac in the Federal House under the Conservative Government, and he became a Minister in the last government; then was beaten at the last election, and now he is practising law in Hull. He also represents presently the Province of Quebec in Ottawa at the Supreme Court of Canada and the Exchequer Court.

Notary Pierre ~~desRochers~~ has the largest notarial firm in Hull. He drives a Rolls-Royce, so he is fairly well off. He knows quite a number of people.

Victor ~~Palmer~~ ~~de la~~ deau is secretary of a credit union, and he travels all over the province.

PROF. McWHINNEY: In a Rolls-Royce?

MR. SEGUIN: No, he does not, but he is well off, I must say. He has the pulse of the people more than anyone else on this thing probably.

MR. Sabin Lemoine, I don't know of him, never



heard of him except from this.

Antoine Grégoire, I know him. He has a business in Hull. That is all I can say of him.

Armand Turpin, Director General, is an ex-mayor of Hull. He is opposed to anything that would affect Quebec in any way. That is his first principle.

MR. PERRY: For better or for worse.

MR. SEGUIN: Yes, that is it.

Mr. Lionel Marleau is a journalist of Le Droit. He is the same category as Turpin.

PROF. MEISEL: I am impressed by the high opinion you have of him.

PROF. FOX: I think that is very helpful.

THE CHAIRMAN: It is like a catalogue of the rich and obstinate.

MR. SEGUIN: There are many other people I might have picked in Hull. I would not say I may not have picked some of them, but there are others I would have picked on this Board.

THE CHAIRMAN: Is that satisfactory?

PROF. FOX: Yes, I think it is very informative. Thank you very much.

--- Short recess

THE CHAIRMAN: If I may, I will take the liberty of raising some of these questions now in turn which I feel I would like your advice upon, and in turn the Prime Minister would like your



advice upon.

The first is the question of the relationships between Ontario and Ottawa at the present time and, in particular, revolving about Mr. Pearson's recent suggestion.

Going back a piece, as you know, when the Confederation of Tomorrow Conference was proposed in the Speech from the Throne on January 25th, Mr. Pearson wrote immediately the following day and said that he was unhappy with the suggestion for a number of reasons, principally the question of the precedent and protocol of a provincial government calling a federal-provincial meeting. Then the correspondence between Mr. Pearson and Mr. Robarts was subsequently tabled, as you have seen it.

In the interval, I may say, there have been some discussions as was noted in the newspaper. Mr. Pearson and Mr. Robarts had a meeting at the time of the opening of Expo, and there have been other discussions and communications about this matter.

The debate in the Legislature, it appears, will give all-party support to the conference in principle, and it is Mr. Robarts' intention then to proceed with the arrangements for a conference in the autumn.

One matter which concerned Mr. Pearson particularly and which Mr. Robarts felt was understandable, was the prospect of a Prime Minister



of Canada who, it must be regarded, stands in a special position, being at a meeting chaired by a provincial Premier. This was one of the reasons why Mr. Robarts suggested that the governments should send delegations according to their choosing, and that he hoped very much that Mr. Pearson would send one of his Ministers, if he felt disinclined to attend himself.

Then Mr. Pearson wrote to all the provincial Premiers - and it is hard to say whether this is a counter-suggestion or an additional, separate proposition - he wrote to all Premiers suggesting that when they are in Ottawa on July 5th for luncheon with the Queen, that the afternoon be set aside for a closed private discussion among the heads of government (and of course there will be no officials or others present at that time) to discuss the whole question of the Confederation of Tomorrow Conference, and other approaches to discussions of the principles of Confederation. That was the original suggestion, that this be a discussion about what should be done and what best might be done.

MR. STEVENSON: Mr. Chairman, I might say that later this morning we will have copies of the excerpt from Mr. Pearson's speech in the Federal Throne Debate, which gives at least a couple of paragraphs on the kind of thing he is



thinking of. I am sorry, it is already around.

THE CHAIRMAN: This is the next step, because following his earlier letter which just asked about a general discussion, in the Throne Speech he moved from the general to the specific and said that on this occasion he thought as a first step and, as it were, as a first conference item, there should be the discussion of the Bill of Rights proposal. Therefore, this would be a first conference on a specific matter and there might be subsequent conferences on other specific matters.

I think probably Mr. Pearson's hope, therefore, was that this meeting dealing with this particular item might become the first of a series of conferences which presumably would be convened by the Federal Government.

However, the Prime Minister of Ontario nonetheless, while quite willing to participate and to join in the discussion of the question on July 5th, is to adhere to his notion that a wider discussion of wider questions according to his prescription is still in order.

The two questions I would like to ask you are the following. First of all, what is your own interpretation and judgment about, shall we say, the broad political context of this series of events? How do you feel that it affects or will affect Ontario's attitude to the



Pearson suggestion and also to the Confederation of Tomorrow Conference?

Secondly, a question which is far beyond my professional competence to judge: what significance do you attach in substance to this proposal? I am not clear whether the Bill of Rights suggestion merely involves a verbal kind of thing in which the provinces all adopt, as it were, what is already in the Federal books; or whether, if it is a much deeper thing, it does not really open the whole door to constitutional discussion, which would appear to be the very thing that Mr. Pearson objected to.

I might say that the thing that Ottawa has been most anxious to avoid in any conference and, *pari passu* in the Confederation of Tomorrow Conference is discussion of constitutional questions. We are agreeable to that, and also agreeable that it should not discuss economic and financial questions, but rather should discuss the goals of Confederation and, in turn, some of the means of reaching those goals, some of which might indeed be constitutional changes which could be dealt with subsequently.

PROF. BRADY: Separate goals of Confederation from constitutional.

THE CHAIRMAN: In the sense of separating goals or ends from means.

PROF. FOX: If you commence discussing



a Bill of Rights, as Mr. Pearson suggests, and I gather the excerpt you were mentioning is the one that has already been distributed here of date May 10th ---

THE CHAIRMAN: Is this page 55?

MR. STEVENSON: That is right.

PROF. FOX: Surely if you commence on Bill of Rights you will immediately get into constitutional problems, as you say. He says it lies within etc.

DEAN LEDERMAN: He has tied it to Mr. Diefenbaker's bill, the existing Canadian Bill of Rights, which is mainly dealing in political and personal rights.

I agree, Paul, though, raising the question of the Bill of Rights can be just about everything, opening just about everything that there is to open up.

PROF. McWHINNEY: I don't know if your staff picked it up yet, but Le Droit had an editorial a week ago on this, and said that it is all very well to have a Bill of Rights but it cannot be separated from the issue of reform of the Supreme Court of Canada, and if you have a constitutional Bill of Rights you have to have in effect your Federal constitutional court.

So I do not think, it would not necessarily follow, but I do not think, if Mr. Pearson



is aware that the Bill of Rights, which on the surface seems a very simple thing, because both Ontario and Quebec have a provincial entrenched Bill of Rights and have concurrent provincial and federal Bills of Rights; I don't know if Mr. Pearson is aware that the question of institutional change will be fairly and squarely raised.

THE CHAIRMAN: I am puzzled by this, because, if I may say so in this room, in our discussion with their officials, it has been impressed upon us with the greatest vigour, that the Federal Government feels it would be totally inappropriate to discuss constitutional matters at this time in any form.

Then this question came, and to my layman's mind, it seemed to me to open the whole door to constitutional considerations. So I am quite puzzled.

DR. FORSEY: I find it puzzling myself and I looked at it again just now to see if my impression was false but it was not: it still seems to me puzzling.

As far as I can make out, all he is saying is that they should all agree on July 5th to put into the ordinary legislation of each province a replica of Diefenbaker's Bill of Rights in the Dominion jurisdiction. Really, if that is what it is, I cannot see a great



deal of point in it and why it should be the subject of a solemn conclave in this deliberation; because then you will have something that is no more ordinary than an ordinary Act of the Legislature. It will be an ordinary Act of the Legislature, just as Mr. Diefenbaker's Bill of Rights is an ordinary Act of Parliament. It will have some symbolic value, but it seems to me that that value is very small.

It also seems to me inevitable that when he presents this, there is going to be an oration from Mr. Daniel Johnson on the sorts of things we all know. In the first place there will be some suggestion on particular rights, personal and political rights, which do not occur in the Diefenbaker Bill, and if Pearson says: "All I want is John Diefenbaker's and they say Bill of Rights"/"It ~~is~~ a good thing for us. We want something else," Then you may get the whole business of collective rights and so forth raised also and group rights, which is not a legitimate.-----

I doubt very much that Mr. Pearson can confine the discussion to the kind of thing he is talking about, and if he does I doubt if he can do anything useful.

PROF. CREIGHTON: I take it what he meant was he could get provincial concurrence to making in effect constitutional amendment



which would enshrine this.

DR. FORSEY: He doesn't say so.

PROF. McWHINNEY: The machinery is not necessarily the important thing. I suspect that reading his reports in the provinces he discovered what is very clear in Quebec, particularly among the intellectual community, a very strong sentiment for a Bill of Rights, and a constitutionally entrenched one which goes along what I call classical liberal lines.

I think in straight legal-drafting terms, the work now done in Quebec goes far beyond, in the classical area, the things that Mr. Diefenbaker did, or that even the other English-speaking provinces are doing. Both big parties in Quebec are agreed on the constitutional entrenchment by some method to determine. It would be possible, if an entrenchment method can be determined, perhaps a matter of drafting to get a classical Bill of Rights that would be agreeable to all provinces and the Dominion, but the moment you raise the issue, as Le Devoir probably did, it seems perfectly proper to open the issue of what institutions determine the meaning. This is where Le Devoir said: "Does Mr. Pearson realize that you have got to examine the institutions that implement this?".

I think it would be very proper for Mr. Robarts to point out that this is a very



simplistic approach as it stands; that it is much more than drafting, and that you certainly could not in one afternoon go through the whole gamut of problems raised. It may be a matter for serious study, and it seemed to me at once much more specific in an institutional as well as a drafting sense, and therefore much more leading to the taking of concrete positions than the Federation of Tomorrow Conference that Mr. Robarts defined; because that is essentially a policy or goals conference and does not really require taking institutional positions.

DR. FORSEY: One thinks of the Anglican Minister delivering the message: "My dear brothers, let us all try to be good and help our neighbours". That is about what Mr. Pearson's proposal is at this afternoon conference, that he and all the ten Premiers of the provinces should get up and say: "Let us all try to be good and help our neighbours".

PROF. McWHINNEY: That is after a large luncheon, and I assume at the luncheon with the Queen there will be wines and cognac.

DEAN LEDERMAN: There is a vital difference, the difference between exhorting the provinces to pass ordinary statutes that duplicate the Federal statutes, and asking to entrench the whole thing in the constitution. It is a very vital difference, because the



interpretation we render in the Courts depends on the fact that it is an ordinary statute, and the minute you change it to a more fundamental document then the Courts can start giving it an over-riding interpretation which so far they have refrained from doing. They have said it is just a rule of construction and these are just presumptions, rules of construction to be used where the Federal statutes are unclear; but if the Federal statute is clear you do not use presumptions about construction. They were invited in one case to overturn the Lord's Day Act and Mr. Justice Cartwright was prepared to do it but his was a single dissent and the rest of the Court said: "No, the Lord's Day Act of 1906 is quite clear, and the presumption in a later Act about how you construe an unclear statute has no application to the Lord's Day Act". But the minute you specially entrench this and make it a fundamental constitutional document like the B.N.A. Act itself, then of course it ceases to be just presumption of interpretation and it over-rides.

PROF. BRADY: And it has profound implications for provincial autonomy.

PROF. McWHINNEY: Mr. Pearson understands the difference because the Quebec discussion was all about the entrenched provincial bill.



THE CHAIRMAN: I was going to ask Ted on that, In your opinion, where the suggestions come from, since Mr. Trudeau is the man who would appear to be advising on these questions now, and I presume that it may be fair to speculate that these suggestions came from that quarter.

PROF. McWHINNEY: I do not think there is any doubt that it did, because he was the founder of the association, and he is the "Great Father" now and has become an elder statesman. It has been one of their projects and it is tremendously popular among the legal community and young intellectuals, French-speaking intellectuals much more than English-speaking. But it has advanced a bill with provision in it, being an entrenched one, and there have been various suggestions put out by Frank Scott among others on how you should entrench special provisions without going to London; but the principle of entrenchment seems agreed and in his funny way Mr. Pearson seems to waver on this. He speaks about enshrining a Bill of Rights and then he says "as it now is in Federal law". I am not sure he is clear what Mr. Trudeau intended.

DR. FORSEY: I doubt whether Trudeau inspired this particular statement.

PROF. McWHINNEY: Not statement, but



the idea.

DR. FORSEY: It is far too precise and unsophisticated and naive for Pierre to have written or to have briefed Pearson on it. I think it is Pearson's rather fuzzy impression of what Trudeau advocates.

PROF. McWHINNEY: But the most affirmative if you wish - "confrontation" is a bad word - the most attractive element of the revolution in Quebec at the moment is the very strong civil libertarian orientation of the young revolutionary; and in a way if the Federal Government presumably want to say it is not opposed to all change, this would be the most attractive area to move in on, because in the face of it both main parties in Quebec are in agreement in a very comprehensive, classical enumeration of rights. I do not see how any English-speaking province could oppose such a declaration as stated. It is on the institutional level though that the problems and difficulties arise.

PROF. CREIGHTON: Surely that also arises in connection with group and collective rights.

PROF. McWHINNEY: Personal rights though. For instance, the Quebec Civil Code is one that is not raised.

PROF. CREIGHTON: If it was going to



be carried to extremity, surely they would be interested in getting the other things discussed as well. That is the very danger as I see it.

PROF. McWHINNEY: The Trudeau personal approach to this and the thinking and writing goes really to individual as distinct from group interests.

PROF. BRADY: Mr. Johnson, for example, in the meeting in Ottawa, if he is going to attend, would, I take it, raise the group.

PROF. CREIGHTON: Would he be expected not to raise the question of group and collective rights?

PROF. McWHINNEY: If you are proceeding on the basis of consensus and you find consensus on so-called classical rights, then you can certainly adopt a Bill of Rights on that and leave the issue of group rights to a later discussion.

PROF. MEISEL: Mr. Chairman, if I could introduce an entirely different kind of element here, in the extracts from the Quebec Legislature debates there is a section in which Mr. Johnson at page 13 argues that one of the things that the Committee has to do is to look at the Quebec constitution, the domestic provincial constitution. It seems to me that this is so closely related to this kind of problem that I do not think the Quebec Prime Minister is going to be in a position



to commit himself on anything very much in relation to this kind of Bill of Rights before his own committee has finished its work in this area.

PROF. McWHINNEY: I wouldn't necessarily say so, with all respect. I mean, there are two aspects to getting a provincial constitution. The Australian constitution, for instance, whether it was a sensible exercise in time or manpower, collected their constitutional laws into one document. You can do this without any implication as to substantive change.

I think what makes it interesting at the moment in Quebec is that the discussion in the Liberal and Union Nationale party links this also to the thought of some kind of presidential type of executive or American type of executive; but you could certainly, whatever position is taken, on the nature of the executive government, you could certainly collect all the Quebec individual constitutional laws into one document, just as you could here, without having to take any position on a Bill of Rights. You can always add a Bill of Rights later, as the United States did.

DR. FORSEY: British Columbia constitutional Act has in review.

PROF. McWHINNEY: With everything collected?

DR. FORSEY: I think approximately so.



PROF. McWHINNEY: There was a period in the Imperial Constitutional history when this was being done. The Australian constitution seemed to do it about 1900. About 1914 somebody got it accepted and they did it. It was quite unnecessary and nobody seems to refer to these things but lawyers, but it could be done. For instance, it could be an Ontario Centennial project, although it is a bit late now, but you could do it without having any piece of constitutional change as such - simply collecting all laws into one document and re-enacting them. This is fairly within provincial power.

THE CHAIRMAN: Someone suggested in the debate last night, as I recall, that it was most unfortunate that Ontario did not have a written constitution.

MR. STEVENSON: This came from Mr. Renwick who was just suggesting it.

At the risk of perhaps introducing a new element, the question of a Bill of Rights came up once during the debate yesterday in Mr. MacDonald's presentation where - I don't know what he said can be justified at all even by the willingness of Mr. Pearson's statement - but he referred to the Bill of Rights and then he went on to talk about a declaration of national purpose to be passed by all Legislatures as a statement of goals, which might even precede any specific discussions on constitutional



changes.

PROF. McWHINNEY: He is a bit confused, he is getting into the other area, altogether different, in the Indian constitution and Irish, so-called directive principles of state policy, but they are quite different from Bill of Rights.

MR. STEVENSON: He has suggested perhaps the earlier discussions might concentrate only on broad goals which might culminate in something being passed by all Legislatures of Canada, which will be almost like the preamble to the Constitution in terms of not individual Bills of Rights but declared purposes.

DR. FORSEY: You know, Pearson "vapoured" because he talks about a statement of all governments of Canada on the basic foundation on which they want Canadian standards to be established. He opens the door there to an idiot like MacDonald to come forward with his suggestions.

MR. MAGONE: I have already expressed my views about Bill of Rights, and I just want to suggest that if this question is permitted to intrude itself into the Confederation of Tomorrow debates, we have had a pretty good indication this morning of what is going to happen by listening to some of these statements here. I do not think there is any doubt from what Mr. Pearson said here that what he had in



mind was adoption by the provinces of the Canadian Bill of Rights as an ordinary statute enacted by the provincial Legislatures. Otherwise I don't think he would have said what he has said.

THE CHAIRMAN: Well, what advantage does that confer, Cliff?

MR. MAGONE: I don't think it confers any advantage. You mean the Bill of Rights as an Act of Parliament?

THE CHAIRMAN: As far as ~~citizens~~ are concerned, if they have it in the Fall term, what additional advantage do they derive?

MR. MAGONE: According to my opinion which I have expressed, I do not think the Canadian Bill of Rights confers any additional rights or freedoms on people. The preamble to the Bill indicates it is merely a declaratory statute, declaration of what the law at the present time is, and it says so. But all the kudos that any politician can get out of a Bill of Rights is already lost and has attached itself to John Diefenbaker.

DEAN LEDERMAN: If the Canadian Bill of Rights has any influence, whether or not it is purely declaratory, that is the issue in the interpretation of it, and the Supreme Court seems to have gone for the purely declaratory view.

But, for instance, there is one area of



provincial offensives if the provinces were to enact these provisions in the same terms; then the prosecution for liquor offences, you could raise an issue of this kind as you can now under the Criminal Code.

PROF. McWHINNEY: Subject to the limitation Mr. Magone mentions, with the status of an Interpretation Act, and many lawyers differ on this, although the general view seems to be because it is not entrenched the offence is very limited; but subject to that, there is no question that uniform provincial and Dominion bills in the same terms as the Dominion bill, would cover areas that are not covered by the operation of the Federal bill, or take up slack where the Federal bill has expressed perhaps too broadly the provincial areas; because this is one of the interesting things in Civil Rights in Canada, that so much is within provincial competence.

This is one of the reasons why the Quebec Civil Code is getting the new Bill of Rights. A good deal of conventional political civil rights is private law in Canada; and if the Diefenbaker bill has in fact efficacy (leaving it open whether it does), if it does, the adoption of uniform provincial bills in the same terms would give whatever efficacy that has in the provincial area.



DEAN LEDERMAN: Ontario already has drawn together this type of provision in the Ontario Human Rights Code, and the way the fair employment area is being dealt with and the fair accommodation practices.

PROF. McWHINNEY: Saskatchewan was the first actually.

DEAN LEDERMAN: And there is a lot in the Ontario statute that is not in the Diefenbaker bill.

Fair accommodation, I don't know that that fits under any category of federal powers, but the provinces have been dealing with it quite freely. This is immensely complex. It is far too much for one afternoon.

PROF. McWHINNEY: A legitimate point, really, I think, from these comments would be that one should advise Mr. Pearson that if what his statement means is simply a repetition in terms of the Diefenbaker bill by ordinary legislation of the provinces, this is not a particularly significant contribution; and the fundamental issues in the area of political civil rights really involve the issue of constitutional entrenchment of any bill when it is adopted and possibly a consideration of institutional consequences with the warning, of course, that these are quite considerable. Perhaps in fairness Mr. Pearson should be told



this, without deprecating his initiative.

PROF. BRADY: Has Mr. Robarts asked for a clarification of this statement?

THE CHAIRMAN: Yes, he is starting to think of preparing himself both for that meeting and for judging the purport of this proposal in conjunction with his own intentions in the Conference.

MR. PERRY: What is the practical position? Has a written invitation yet been received to this Conference, or do we just have this statement in Hansard?

THE CHAIRMAN: Well, yes, the invitations went out to the Premiers to the meeting in general terms and then the statement in Hansard suggested the subject of discussion. As far as I know, there has not been a further letter directly suggesting that these items be discussed.

Now, that may happen yet, and even if it does, it seems to me that some of the Premiers may well want to write to Mr. Pearson in advance of July 5th. Some may feel, for instance, that they do not want to talk about this kind of thing at all. Others may want clarification or expansion.

I think, however, that because of the present state of affairs between Ottawa and Ontario, because of the prospect of the Confederation of Tomorrow Conference, I think



Mr. Robarts may well want to express some opinion to Mr. Pearson in advance of July 5th. In any event, he is being asked by the press all the time what does he think of this proposal.

DR. FORSEY: It seems to me the Ontario government cannot object in principle to Pearson raising this if he wants to after the luncheon. No particular harm in all provinces passing such legislation (in effect it would be small), and the consequences, as pointed out by our legal friends, might be very large, but it seems to me the position of Ontario would have to be "Yes, but".

DEAN LEDERMAN: Is ~~there~~ anybody who opposes the Bill of Rights ~~who has~~ had ~~be~~ be accused of being in favour of ~~his~~ own? You have to be very careful.

MR. PERRY: It might be a good idea simply to say to the Federal Government: "Look, we will come to your conference" implying perhaps "You should come to ours".

THE CHAIRMAN: That has certainly been the line in general terms right along.

DR. FORSEY: I am not at all certain this whole business of Bill of Rights isn't pretty dubious stuff, that it is better left to the Courts in the traditional English way; but on the other hand one cannot always have one's way about these things and possibly some



legislation of this sort, entrenched clauses and all that kind of thing, is going to appease certain people without doing very much harm to anybody else. I cannot get all steamed up about it.

PROF. McWHINNEY: It is very noticeable among law students, it is the exciting word; it is true in the United States and it is now true here. The interesting thing is it is an issue on which there is not a bicultural difference.

I agree with Eugene it seems Mr. Robarts, since he has said that constitutional discussion is a good thing, he cannot rebuff Mr. Pearson's good initiative and I think he has to say it is excellent. "It is not a substitute for a more comprehensive and scientifically planned conference such as my own". I wonder if he realizes this is really a "Pandora's Box" if it is something meaningful. If it is not, if you just want the Diefenbaker thing as ordinary legislation, fine; it is trivial, but we will do it.

THE CHAIRMAN: Yes, you might have gone so far as to say that Mr. Pearson's anxiety about constitutional discussion appears to have moderated.

DEAN LEDERMAN: One thing that would be raised would be no doubt that at the time the



Diefenbaker bill was going through the House, the Liberals at that time and, I think, Mr. Pearson, all made the sort of objection that we are raising now.

PROF. McWHINNEY: Mr. Pearson quoted me on that occasion in support of the case against the Bill of Rights.

THE CHAIRMAN: Pickersgill carried the ball rather strenuously, did he not, on that question?

DEAN LEDERMAN: Raising what you might call the traditional common law objections to Bill of Rights.

MR. MAGONE: As one friend said to me once in connection with a suggestion of that kind, where you face a former member of the Opposition now in Government with something he said, he says: "It doesn't mean anything".

PROF. McWHINNEY: Somebody quoted to Mr. Justice Jackson something he had said as counsel, and he said: "Why should I be impressed by earlier partisan advocacy in another case in another place? It is irrelevant".

PROF. FOX: I wonder if in that event it wouldn't be useful to speculate on the genesis of this statement; whether possibly Mr. Pearson had a vague idea of political one-up-manship and he thought this might outdo the Ontario bid, so he put up the idea of everybody



getting together and talking about where we are going (which is not unfamiliar to this group) and then somebody suggested to him (I would hazard a guess, Mr. Trudeau) that you could look at something specific and he probably suggested the idea of the Bill of Rights. So we get this melange put forward by Mr. Pearson of the wider idea presented and also something specific attached to it, although the two things are quite contradictions really.

If we approach it from that point of view, perhaps the Ontario position can be better formulated. I really think this is a piece of political one-up-manship.

THE CHAIRMAN: The additional point being that he was able to draw off the fire of Mr. Diefenbaker and his own position in the House when he says that the Bill of Rights will always be associated with the name of "My Right Honourable friend, the Leader of the Opposition".

DEAN LEDERMAN: He is getting what the lawyers call an estoppel working against Mr. Diefenbaker.

PROF. McWHINNEY: It doesn't say very much. Just because associated with his name, he doesn't say what association it is.

PROF. FOX: If we take that approach to it, I think it tends to minimize the significance of worrying about what Ontario is



to say on a Bill of Rights at this particular conference, because they may never get to it.

THE CHAIRMAN: You think it is more a matter of tactics than substance?

PROF. FOX: That is my guess.

DEAN LEDERMAN: Even if it is tactics, you have to be prepared to play the game according to those rules.

DR. FORSEY: And the Ontario Government does not want to be in the position of apparently standing up for sin.

PROF. FOX: You can assume you are going to play a game only. It is unlikely you are going to get very far in philosophical discussion of anything. If you are talking long enough about goals we are all striving to attain, the problem may solve itself.

THE CHAIRMAN: Time for anecdotes.

PROF. McWHINNEY: It is not really a problem in the simple sense, the issue of adopting the Diefenbaker bill. There will be higher considerations for the Ontario Legislature in the light of what Cliff said about the limitations, but certainly it would do no harm to accept it gracefully. I think, however, one should indicate at this stage, perhaps even in the Premier's public comments, that it is a highly simplistic approach to the issue of the constitutional future of Canada, but



one goes along in the spirit and hope Mr. Pearson will go along in the same spirit with a more fundamental pattern.

DEAN LEDERMAN: On the fundamental issue, I am in favour of the Bill of Rights, and I have said so, provided you do not oversimplify and do not expect too much.

THE CHAIRMAN: I think, as I mentioned, there are two questions involved here from my point of view. One is the speculation on the political gamesmanship which we are pondering. The other is to have some fairly systematic assessment of what the implications of the thing are, if it is indeed a suggestion of substance.

I think, Paul, that whatever the genesis of the idea, it may still, having been raised, become a matter in which there will be substantive discussion at some point. Therefore it would be very helpful if we could have a very brief paper which would pull together some of the arguments and some of the issues that it raises, or a sort of layman's primer.

PROF. FOX: You can have a paper on the one hand, and this may what is called for on this occasion, but all I am suggesting is I do not think it is really fruitful for us to consider the possibility now of arguing through whether or not this Committee ought to recommend



strongly in favour of the adoption of a Bill of Rights in other provinces and so on, when it is probably not that substantive a matter for this particular meeting.

MR. STEVENSON: Nevertheless, Mr. Chairman, I think if Mr. Robarts is concerned at all in establishing his seriousness in the whole question of Confederation, if he were to go to this meeting with a number of pertinent questions or comments on the whole proposal, probably in the form of a little document he might leave with other members or something which at least shows he is making a constructive contribution to the proposal which Mr. Pearson has brought up, this should enhance, I think, the load for further discussion, at the Fall conference, and later ones.

PROF. BRADY: Mr. Chairman, Dean Lederman has already written a paper on this.

THE CHAIRMAN: Yes.

PROF. BRADY: Directly relating to the kind of questions which were raised by Mr. Pearson's invitation. I don't know, but I don't suppose it would involve a great deal of trouble to do that.

DEAN LEDERMAN: I would be willing to take a shot at it if it is what the Committee would like.

THE CHAIRMAN: Bill, you have it at



your hand there, and as Professor Brady says, your paper is quite a comprehensive study. If in a nutshell, sort of four or five pages, you could pull out the points for us, it would be very useful.

DEAN LEDERMAN: It would be more than four or five pages, but it need not be very lengthy either.

THE CHAIRMAN: Whatever you feel you could manage.

DEAN LEDERMAN: What kind of time limit are we talking about here?

THE CHAIRMAN: I was thinking of something fairly quick, within a fortnight, say.

DEAN LEDERMAN: A fortnight is possible, yes. I have thirty papers left to mark. I can get at it. I will have a shot at it.

THE CHAIRMAN: Thank you very much. We will send it around to the others as soon as we receive it.

MR. MAGONE: There was a discussion in the Ontario Legislature a few years ago when Leslie Blackwell was Attorney General, on a Bill of Rights. Somebody brought up the question.

THE CHAIRMAN: Probably you, Cliff.

MR. MAGONE: No, this is before the Canadian Bill of Rights was passed, some time before and my impression (it is not a recollection) is that it was within the first couple of years



of Mr. Blackwell's ten years as Attorney General.

PROF. McWHINNEY: What period was that? Was it in this post-war period when they were discussing the U.N. declaration?

MR. MAGONE: I have forgotten, except that I remember the event. It did come up.

MR. STEVENSON: That will probably be the late '40's.

PROF. SYMONS: About 1948.

PROF. McWHINNEY: Universal declaration, as Keiller Mackay was giving the right in this Drummond Wren case.

MR. MAGONE: It has every indication that a Bill of Rights is unnecessary.

PROF. McWHINNEY: Except that the Court of Appeal took a somewhat different view in later cases.

THE CHAIRMAN: Are there any other points on this?

MR. PERRY: Just generally on the prevailing Ottawa-Ontario atmosphere, I have had one or two experiences recently which shocked me at the strength of the full thrust in Ottawa about Premier Robarts' move. I had one Federal Cabinet Minister almost suggest that I had criminal tendencies because I had even been a member of the Committee that had been associated with this proposal, and he more or less implied that everything that would be possible would be



done to stop this conference as far as Ottawa was concerned.

THE CHAIRMAN: Indeed? Used the term "all political forces at his command" sort of thing?

MR. PERRY: No, the occasion was not quite as formal as that. So that there is a good strength of feeling, and I can say one argument I was cited, and that is that they say: "If we send delegates to this provincial Conference, what will we ever tell any other province in Canada hereafter which wants to have a similar conference and wants the Federal Government to attend?".

THE CHAIRMAN: Well, they have quite a number of Ministers.

MR. PERRY: This has not shaken ~~me~~ faith at all. I think Premier Robarts is doing the right thing, but, as you have probably sensed, the feeling in Ottawa is one of shock.

PROF. McWHINNEY: Harvey, without pressing you as to who it was, I have the impression it is not a monolithic Cabinet in this issue.

DR. FORSEY: Walter Gordon may settle all these problems for us.

PROF. McWHINNEY: I wonder whether this represents Mr. Trudeau's views. I would be surprised to learn it was Mr. Trudeau who



expressed, for example, this opinion.

MR. PERRY: It wasn't Mr. Trudeau, but without having spoken to other Ministers one would not be able to ---

PROF. McWHINNEY: I think there is a little schism in the legal advice which the Prime Minister is given, which accounts for it.

MR. PERRY: Wouldn't you say this is, Ian, more or less the official view?

THE CHAIRMAN: As I mentioned, there have been certain discussions and I don't think we over-state the view.

DEAN LEDERMAN: On the other hand Ron Burnes is getting a very good reaction from the top Federal people to a conference with a corresponding group from Ontario.

PROF. McWHINNEY: I take it they have agreed to come from his letter, so it must be clear at the top level.

MR. PERRY: Playing this game with the tactic of eliminating a large number of provincial conferences, I would have thought you would stand on your dignity and say: "Our civil service have no business getting involved in this".

In other words, it strikes me the agreement of the Federal officials, which must have been cleared up above, to take part in the conference at Kingston, coupled with Mr. Pearson's



statement, it seems to me, shows either perhaps an uncertainty in it, or possibly a shift of tactics.

DEAN LEDERMAN: Anyway there is a chance to improve the atmosphere perhaps.

PROF. McWHINNEY: Very much so.

MR. PERRY: In their own phrase, there is all sorts of good nature and give-and-take on these issues, but I was quite surprised at the very hard attitude on this.

THE CHAIRMAN: It is hard to know. There are any number of reasons one could adduce for the reaction. I must say that I don't know whether there is a feeling that they misjudged and therefore they are a little upset with this or not, but the business at the Federal-Provincial Conference in October on the final day, Mr. Robarts spoke more on this occasion than at any time during the week and, roughly paraphrased, his words were that "we have talked about nothing but money for the last number of conferences. I do not like the results of this week but I accept them. There they are. Let us put that aside. We have got two years in which to try and straighten out some of the fundamental questions that are bothering us, and to discuss some of the philosophy of Canadian federalism".

For example, the whole business of the Federal position last October was based on a new



and very explicit philosophy. It was based on the decision that there would now be a rigid adherence between Federal and provincial responsibilities, as you know, and one, he said, should not stray into the territory of the other.

Now, the point is that whatever one thinks about the wisdom of this philosophy, it brought a completely new imprint to Canadian federalism. As opposed to the earlier co-operative federalism phase, it was not discussed explicitly. Rather it was introduced through the medium of certain fiscal changes which are means. In other words, the cart was before the horse and the means were before the ends.

Now, this is resulting in some rather paradoxical situations already. Federal officials have often said to us, have encouraged us to take a more active part in foreign affairs in cultural and educational areas, to provide a counterweight to Quebec so that they are not the only people who are behaving in this manner.

I had a very interesting conversation with a senior official the other day in Ottawa, and I said to him I was very happy when we got through our discussions here and the Government decided that Ontario should become part of the Federal Deposit Insurance scheme because in my view the capital market was a national institution;



we had a single economy in this country, and it was highly desirable that the Federal Government should run the Deposit Insurance scheme. To my astonishment he said: "You know, I was hoping you people wouldn't go into the scheme so that Quebec would not be the only province that was not in it, and we would have a counterweight".

Here, you see, are very important consequences in the structure of federalism evolving out of specifics rather than getting on to the kind of system we want to have.

So I come back to my main report. What Mr. Robarts said was: "Therefore, I am tired of the cart going before the horse. We have got to get down and talk about the fundamental questions of federalism first". Mr. Pearson said: "Well, that is fine, that is very interesting; and that is a matter we will leave to Mr. Robarts". Whereupon he went off and gave the speech on November 1st and said he was going to do this, and went to Montreal in November and said he was going to do this. I was specifically asked by Federal officials whether he meant it, and I said: "You can be certain of this, as certain as night follows day".

I have the feeling that even then they did not really believe us. So when the thing came out in the Speech from the Throne there was



a genuine sense of hurt.

PROF. CREIGHTON: Mr. Chairman, in explanation but not extenuation of the feelings of the Federal Government on this notion, it is also true, as Eugene reminds me, that this Committee, or at least a number of its members, were similarly very disturbed about the probable implications of this Conference and very worried about what might happen at it.

THE CHAIRMAN: That is right. This, I suppose, is precisely what Mr. Pearson and his colleagues are thinking about, because it might be a veritable Pandora's Box of trouble. This is what some of us have been saying.

MR. STEVENSON: Mr. Chairman, I think this is quite right and it perhaps explains one of the other Federal objections, that they fear at this point any kind of a forum that would give an outlet to Premier Johnson and the current more nationalistic feeling in Quebec. I think it goes directly counter to their own position, which is not to have any kind of discussion that could get around to a confrontation, until they have their own position really pretty solidly prepared.

THE CHAIRMAN: But the other way of putting it, what they are really saying is (and I am not passing judgment on this) but it seems to me they believe that the Federal



Government only should decide on how Federalism is to function; they would not discuss or decide jointly.

PROF. CREIGHTON: Surely that is a false interpretation. I mean, it doesn't seem fair that the Federal Government should dominate the evolution of Canadian federalism, but it should call the conferences at which these subjects should be discussed.

PROF. McWHINNEY: Except there was no initiative to call a conference, in terms of the present crisis, but quite obviously there are different tactics for resolving it. One way is the very pragmatic way of letting things solve themselves problem to problem. Another is what is really a much more ~~confidential~~ approach, of calling a conference and discussing policies. They are two widely separated approaches.

I have the impression the Federal Government, rightly or wrongly, had decided against the second approach, and I think it perfectly proper for Mr. Robarts to say: "I don't agree with you. There are times when you solve problems at a low level, and other times when you come back to your fundamental policies".

THE CHAIRMAN: What I meant to say is that as a practitioner of Federal-Provincial affairs, after five years of appealing for a forum to discuss matters of federalism rather



than to discuss particular problems of tax-sharing or what-have-you, that he found no inclination to do this, but he felt that it was of the essence that it be done.

PROF. McWHINNEY: I think it is really Mr. Pearson's philosophy. You know, this is really the core of the foreign affairs trouble. The Prime Minister in general does not seem to like discussing policies, objectives, ends. Maybe he is right in that, maybe not, but I think it is legitimate for someone who takes the other approach to say: "We won't get initiative from you and we will move in". I take it this must be Mr. Robarts' position.

DR. FORSEY: I suspect another element in this also, that the Dominion having stiffened its policy in relation to provinces and more particularly in relation to Quebec nationalism since last Fall, now rather hopes that, given a bit of time, it can make its own counter-propaganda in Quebec; that Trudeau, Marchand and Chretien, for example, can do something to change the climate in Quebec; and that if you are going to have fundamental discussion, you may have it in a more reasonable atmosphere after they have succeeded in getting a good job going in Quebec. They may be wrong but I dare say they may have been thinking of something of this sort.



PROF. McWHINNEY: Except I don't think they are the ones opposed to the Conference. They are speaking out, and very eloquently and persuasively and courageously, where the rest of the Cabinet are not. I have the impression they are not the ones opposed to this Conference.

DR. FORSEY: My recollection of what Pierre Trudeau used to say when he was a private citizen is that he is not much impressed by the necessity of any constitutional amendment at all, and that he is inclined to think all this talk about constitutional amendment is a tempest in a teapot. I haven't talked to him for a long time about this, not since he went into politics.

PROF. McWHINNEY: It is his present position I am interested to know, whether he still has it.

DR. FORSEY: It was certainly the impression I had, and made quite often, and he was more adamant on this than I should have been.

PROF. McWHINNEY: He likes discussion and he does love debating, and sees merit in convincing people.

MR. STEVENSON: Mr. Chairman, Charles has gone to find -- he thinks he remembers a place where Mr. Trudeau has committed himself in print to opposing the Conference.

DEAN LEDERMAN: In a series of



conferences, it is not necessary presumably, but the importance may be to establish the point that you do not need change.

PROF. McWHINNEY: To convince people. That is why I wish Trudeau would dominate all the Federal Cabinet. He is the one effective debater who makes points and convinces.

DR. FORSEY: And knows what he is talking about.

PROF. McWHINNEY: I would not be even convinced by a published statement that he has gone against it. I wonder if it is his master's voice.

DEAN LEDERMAN: There is a statement in the Resources for Tomorrow Conference some years ago, he has a statement there where he says he thinks the crux of the Federal problems of the country is not in constitutional change, in the constitutional context, but in other things.

PROF. McWHINNEY: In economic matters.

DEAN LEDERMAN: I was thinking if we are headed into a series of conferences (and we probably are) I was wondering if as a matter of tactics the Federal Government could be persuaded, or it could be suggested to them, that the more important conferences will be the later ones, particularly the last one, and that is the one that should be in Ottawa under the sponsorship of the Federal Government.



THE CHAIRMAN: In explaining the situation of the Ontario Government a few minutes ago, I am not sure I explained myself very well and I don't want that interpreted as suggesting something different from what I meant. What I was trying to get at was that the Federal Government has said that in their view the time is not ripe for these discussions and for this Conference, because they have not yet established their position.

Now, that is quite legitimate, but it is also the basic source of disagreement between Ontario and Ottawa. Mr. Robarts says: "The very thing we do not want to do is to call conferences with established positions. We want to go to work those things out together. In the same manner, we do not want to go to a fiscal conference and find that here is the position, take it or leave it. We want to go and try to work out together what is in the best interests of Canadian federalism".

Now, this is a very profound philosophical difference in the functioning of the federal system of government, I will submit, and this is really what I think is at the heart of the disagreement.

PROF. BRADY: Mr. Robarts really wishes to continue on the discussion in his conference. He emphasizes that it will not



complete the discussion of the problems of Confederation. He has said that it may require a number of conferences to do that, but he is anxious to begin a discussion on the ground that there is not sufficient discussion by representatives of government with respect to what Confederation really means or should mean in the circumstances at present.

PROF. CREIGHTON: I do not follow this argument. It seems to me to end in the summation that the position taken by the Province of Ontario is in some curious way inherently morally superior to that adopted by Ottawa; in other words, it has more validity. Why is it politically advantageous or useful to sponsor a series of what might become very disintegrating discussions, when the person making the proposal for the discussions has in fact no precise position to advance? In other words, it seems to me you might very well say that that is simply frivolous, without purpose, without intention.

PROF. McWHINNEY: The only difficulty, Donald, there is an area for a committee such as ours, where the political judgment has been made and decisions were made to have the Conference, to sponsor it as an Ontario position, I take it the position is to give the technical advice that would demonstrate where it can be



useful.

PROF. CREIGHTON: I agree with that, but there is a fundamental difference here of approach, a philosophical difference. It does not seem to me the issue. There is a fundamental philosophical difference, if there are two different concepts of federalism.

PROF. McWHINNEY: Differences of method perhaps.

THE CHAIRMAN: Let me put it this way, because we are going to have to think about this for the Federation of Tomorrow Conference. Let us hypothetically give each government a position. I am saying that I think the Ontario Government would say: "Let us have a conference on Confederation". Let us presume that the Federal Government had not heretofore enunciated their new philosophy of strict adherence to jurisdictional areas. Let us say that they will come to the Conference and say: "We now wish to advance a point of view on Confederation in which all provinces will be treated alike, and there will be a strict line drawn between their responsibilities".

Supposing Ontario came and said: "We think that we should have a multifarious type of Confederation in which there would be many times when the Federal Government should do things for Prince Edward Island, whereas



Ontario should do it for themselves", and here is another interpretation of how Canadian federalism should work.

In such a case the point is you would have certainly different positions to discuss, but they would not be decided unilaterally but together.

PROF. CREIGHTON: The Government might very legitimately say this is a false generalization induced by particular action which they took last October.

DR. FORSEY: It seems to me not unreasonable that they should say: "We do not think this is a good time for a conference. We haven't yet finished working out what our position is." Going into a conference with a position and going into a conference locked into a position are two different things. If you say to the Government of Canada: "We don't care whether you have made up your minds where you think things ought to be going to. Come along to it. All the better if your mind is open on these things. Come and start talking without them." It is a very popular slogan to talk first, think afterwards".

I think the Dominion Government is entitled to say: "We do not want to take part until we have made up our minds what kind of propositions we are going to advance." They



are not going to be locked in. It need not be a take-it-or-leave-it proposition, but I think they had better clear in their own minds what position they are going to take, and if they say: "This is not an easy task", they have something they could substantiate, and "We haven't yet figured out and we do not think this is a good time for a conference of this sort", I don't think it is an unreasonable position.

PROF. CONWAY: How do you cope with the position of the Federal Government if they in fact give you this answer continuously?

DR. FORSEY: They haven't given it continuously. They are supposed to have a task force working on this thing, and it seems to me that it is not an unreasonable objection for them to take, as they quite clearly have, that they should work out very carefully what the implications are.

We have been working, for example, on the Ontario position. We did not sit down in the morning and come away in the afternoon with the whole thing done. And working out an Ontario position is vastly simpler than working out a position which is taking into account the interests of the whole country. I do not think the position of the Dominion Government is at all unreasonable.

MR. PERRY: I am afraid it leads to



the position that they will always have the initiative in calling the conference; because when they have made up their minds they will think that is the appropriate time to disclose their position to the provinces and they will call the conference.

DR. FORSEY: I think frankly they are the people who should call it. I disagree entirely with this idea of any province calling such a conference. It is Mercier over again, and it troubles me, and I am afraid this is going to have the most unfortunate consequences. I enter my strong dissent against the thing. I thought I did before and if I didn't I want to make it clear. We are stuck with it. This is completely irrelevant. The decision has been taken. We now have to try to salvage what we can from a possibly very dangerous situation which this may set in train.

PROF. CREIGHTON: Hear, hear!

THE CHAIRMAN: That may be a note on which to adjourn for lunch. It is now 12.30.

PROF. CREIGHTON: I thought you knew that anyway.

DR. FORSEY: I raise, as Lord Randolph Churchill once said "The last wail of the expiring Tory party".

MR. PERRY: This issue will come up surely in Kingston, and that meeting can be quite



crucial. I am wondering if anyone knows what the Federal representation will be there?

PROF. McWHINNEY: Is it this task force that has been talked about?

PROF. MEISEL: No. Of the people who have been invited at the moment, only Cartier has said "No".

PROF. McWHINNEY: This is External Affairs Cartier?

PROF. MEISEL: Yes. Bryce and Robertson I think will come; Johnson, Steele, I think.

MR. PERRY: Those are Deputy Ministers.

PROF. MEISEL: No Minister as yet. Duffett from D.B.S.

PROF. McWHINNEY: That is not the task force clearly, is it? The task force is a level below that.

DEAN LEDERMAN: Johnson, Robertson and Bryce, you have got three top people.

PROF. MEISEL: Before we leave this, I think there is something exceedingly important has come out of this discussion which ought to be placed very high on the Kingston agenda. This perhaps reinforces Harvey's point, but there is a very profound difference in outlook between the Federal Government now and the Government of Ontario in terms of who had the initiative, and it is really a matter of the nature of the Confederation as to what extent



the central Government is the government that really calls the tune in these things to which the others will respond, and to what extent there will be tune-calling, if any, among some of the lesser participants; and while it should not be put in these terms, I think it would be exceedingly useful at Kingston if we had a very frank discussion of what we think to be the motives of the Ontario Government and the Federal Government in responding to this particular situation, because I think it lays bare a very serious difference which I think we ought to at least understand.

THE CHAIRMAN: Could we adjourn the formal meeting for lunch?

--- At this point the meeting adjourned at 12.30 p.m.  
until 2.00 p.m.

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THE CHAIRMAN: Just before we adjourned in the morning we were talking about the basic philosophical question here about the interpretation of Confederation and any changes in it, ~~our~~ discussion of changes in it, and John Meisel raised the point that we should perhaps be using the opportunity at Kingston to have some discussion of this basic problem which I think is very deep and is very much beneath the surface of the whole problem; and I think the problem must, inevitably, be political to a degree. But I am convinced that it is more than political, let me put it that way. In any event, it certainly should be.,

That, in turn, raises another question and that is the matter of the Kingston meeting. I am not sure but ~~that~~ there may have been a little misunderstanding between my office and Mr. ~~Byrnes~~ about the procedure we are going to follow there. After discussion with him a few weeks ago I said I would send out a survey to the members, as I did, to ascertain whether the dates proposed - and those dates were proposed finally by Mr. ~~Byrnes~~ after a series of extensive consultations with the ~~Federal~~ officials.

Well, after that, they said that those dates were the only dates that were possible for them unless we were to put off the idea until the autumn, and so I said I would ascertain whether



those dates were acceptable to our Committee.

In the interval I gather that Professor Burnes has sent out, in fact, an invitation to all members for that weekend. I haven't had replies in from everyone here. I am just going to pass this around and just check yes or no to complete that survey.

I thought, however, since one or two members had expressed to me disappointment that they may not be able to attend that meeting because they were otherwise detained, we should consider your views on the timing of this meeting which Professor Burnes has, as I say, well in hand and which suits the Federal officials, and also give some thought to exactly what it is we would want to discuss with that group when the meeting takes place.

The question was raised about whether the officials in Ottawa, whom we can or who have been described as a Federal task force on Confederation, would be present among the group invited.

Frankly, I have not been able to find out from anyone in Ottawa who this task force consists of, whether it is a political group or a group of officials, or exactly what it is, although the officials invited from Ottawa represent a cross-section of senior people from various departments.



Do you want to ---

PROF. BRADY: Well, I think, Mr. Chairman - I am guessing here - but I think Jean Beetz is a member of this group, I would imagine that he has accepted the invitation to come. I do not know who else. There is some discussion, I think, that Ron Burnes talked to some people in Ottawa about whether Mainer Lens should be invited, who has just come to Ottawa to lick these kinds of problems, and I think there was some feeling that he hadn't been there long enough to be familiar with ---

THE CHAIRMAN: Precisely the reason he should come.

PROF. McWHINNEY: The task force I think is still not properly defined and what it is going to do. They are still hunting for a chairman. I do know one man they approached to be chairman on a full-time basis. He refused and they then approached him to be chairman on a part-time basis and he mentioned other commitments that were known to the Federal Government; so I think until the Chairman is announced its personality won't be apparent. I can't remember the name of the man who was approached but, from his personality, it struck me as if it would be a committee vaguely like our own because he was not a person from the Civil Service; he was from outside the Civil Service and had no real



connection with the Civil Service field except as adviser. They want a distinguished figure with some distinguished background, and I understood they then were approaching a Dean. So I think the personality - the latest announcements ~~are~~ that he will be announced in a matter of days, haven't they, Don? And I believe the committee that was revealed was Lalonde, and Beetz, Scott and that group.

THE CHAIRMAN: It is a group of six or seven or eight.

PROF. McWHINNEY: Well anyway, I think this is a better group. It is better to have Gottlieb than Cadieux; although Cadieux is the under-Secretary he is not calling the signals in the area.

PROF. BRADY: Well, Mr. Chairman, perhaps what I might do is give Ron Burnes a shout about this and suggest to him that this is what we thought and he might take this up when he talks to whoever he talks to in Ottawa. I think he cleared initially with Gordon Robertson and Bryce and when they gave approval I think he went beyond this.

THE CHAIRMAN: Well, I did raise the question about the problem. It appears that, from our survey, all -- well, there are seventeen of us on this Committee, we have heard from all but two of that group. Three have said that



they could not come and two are in the probable-doubtful category. There is the question then of the views of those who couldn't come at this time, whether they would very much want to be there, other things being equal, and also the question about whether this is the best time to be discussing with the Federal officials the problems that are before us and, indeed, to consider what problems we wish to discuss with them or which they might wish to discuss with us.

PROF. FOX: I should like to be present at this meeting, Mr. Chairman, but on that particular day I can't come.

DR. FORSEY: I should very much like to be present too, Mr. Chairman. I can't on that day and I would fear that almost any weekend would be inconvenient for some of the Committee.

PROF. FOX: I am sure that if it is not taken now it will be difficult for the Federal people before autumn -- why that should be assumed I am not quite sure -- but, personally,--

THE CHAIRMAN: Well, the only indication that I had from Barnes - and I don't know how many people this represented or whether it was the view of the principal spokesmen with whom he was discussing the matter - they found, when this discussion began in the middle of April, that every other weekend was ruled out for some



reason or other as far as they were concerned until (I think they said because of holidays and what-not June and July, July and August would be out).

PROF. McIVOR: I would like to be present but that again depends to some extent on who the Federal officials would be.

PROF. BRADY: Well, Bryce and Gordon Robertson, and who is the other one? They are supposed to be pretty well certainties.

THE CHAIRMAN: Well, I had a letter handed to me a few moments ago (came in today from Professor Burnes) and he says that so far he has had definite acceptance from - well, he said he sent 18 invitations to Ottawa and he has had definite acceptance from Mr. Deutsch, Chairman of the Economic Council and a member of his staff; Mr. Shoyama, who used to be the head of economic planning in Saskatchewan. He has had acceptances from three of the senior officials in finance, who are each concerned with Federal-Provincial affairs; Mr. Bryce, assistant Deputy Minister to Johnson, and Mr. Gallant, who is the Director of the Federal-Provincial Affairs division under Mr. Johnson. Also from Mr. Isbister, the Deputy Minister of Energy, Mines and Resources; Mr. Kent, Deputy Minister of Manpower and Immigration; Mr. Duffett, Dominion Statistician; and Gordon Robertson, Clerk



of the Privy Council. The only refusal so far is Mr. Cadieux.

"I would expect that we can be assured  
"of at least twelve people from  
"Ottawa, perhaps more. I hope that  
"there will be a good representation  
"from your group.

"Arrangements have been made  
"for accommodation in the Graduate  
"House of the Union. Meetings we  
"will hold in Dunning as before."

PROF. McIVOR: Well, that is fairly heavy metal.

PROF. FOX: I do not see, Mr. Chairman, how we can really consider the possibility of an alternate date with such acceptances as that from Ottawa; but I feel I must say that I regret that there wasn't a little more consultation with this Committee by Professor Burns before he proceeded to that extent.

PROF. BRADY: Yes, I think we will have to bow to what is essentially one more Federal Government fly-out.

PROF. GREIGHTON: I thought it was rather a Queen's University fly-out.

MR. SEGUIN: Are the people who cannot attend tied up for the whole weekend? Is there any possibility of having a warm-up day to cover all those things which we consider to



be particularly important? Those members of this Committee who are unable to come for the whole thing might at least come for part.

DR. FORSEY: The thought occurs to me, Mr. Chairman, I wonder if it is not too long? You remember mentioning Premier Robarts' view on the duration?

THE CHAIRMAN: Well, it is a day and a half.

DR. FORSEY: You are really counting into there Friday, Saturday and Sunday.

THE CHAIRMAN: The actual conference time is a day and a half.

DR. FORSEY: Yes. Well, we don't do any business on Friday evening but we have all the length of time that it takes to get there.

PROF. McIVOR: I was thinking of the Federal Civil Servants.

MR. SEGUIN: Well, I think the Federal Civil Servants can just fly down in two hours after dinner on Friday.

DR. FORSEY: I would be inclined, on just general principles, I think it is very desirable to have an evening before, as we did last time, where you don't do any formal business but just get to know one another and then have a full day the following day and perhaps half a day. If you start in the afternoon, you know how people have to come on



trains that leave Toronto and Montreal in the morning and if you have to start about two o'clock it is not desirable. We have tried this and people are sort of shaken up, if they have any hangover, perhaps.

PROF. SYMONS: Just on the future occasions, do meetings of this sort necessarily always have to be on a weekend? Certainly in the case of the Federal representatives a conference of this sort might be considered in their line of duty, and I am not sure that it is necessary always to have a weekend meeting.

THE CHAIRMAN: Well, that is a question I am asked regularly by my wife, and I concur in that point of view.

Those who cannot come I presume are irrevocably committed to other matters?

DR. FORSEY: Can I raise the question of what status exactly this thing has? If we get some character like that man Greer, how are we to tell the truth, please?

PROF. CREIGHTON: You are well prepared by now, Eugene.

DR. FORSEY: Well, I would tell him to go and boil his head but other people with more responsibility and more future prospects and ambitions would not feel inclined to do this. I think we had better all try and say



the same thing, not just boil your head.

MR. SEGUIN: I would take your lead, that is excellent.

DR. FORSEY: I am serious. I took the line last time with this man that there had been no meeting of this Committee.

THE CHAIRMAN: Quite so. It was a seminar at Queen's.

DR. FORSEY: And I was rather given to understand that, in fact, Dr. Craven - I want to know what is supposed to be the straight line on this thing and then I will adhere to it.

MR. SEGUIN: Ron Burns' letter is very carefully worded. I think Bill probably advised him. There is quite a difference between the invitation of the last one.

PROF. BRADY: Well then, how to the line of Ron Burns' letter.

MR. MAGONE: I don't think we can tell you the truth this far in advance.

THE CHAIRMAN: The only problem is when partial or half-truths come sneaking out of the meeting and find their way into the press and people ask you, in the usual way, if this was said and so on, and you have to say "yes" if it was or "no" if it wasn't, and thereby confirm it; but I think the line is this is a private seminar sponsored and arranged



by Queen's University, period.

DR. FORSEY: There is only one thing about the list of names still worrying me, they do not really have any of the names listed of this so-called task force. They don't, and I think it will lose most of its interest if it doesn't. The under-secretaries, I suppose, will watch their briefs carefully and not say too much, will listen to the task force people, being younger and more flexible in a way being involved in the decisions.

THE CHAIRMAN: Well, it will certainly be a great service to me and everyone in the process if we can find out who the task force is.

DEAN LEDERMAN: I do not know who is meant by this task force.

MR. SEGUIN: If we knew --

PROF. McWHINNEY: Well, Trudeau does because he is the one that keeps on talking about them, about naming the head of it in the next day or two.

THE CHAIRMAN: Unfortunately I asked him and he wasn't able to tell me.

PROF. SYMONS: Surely Mr. Pearson has referred to it himself and by the name of --

DEAN LEDERMAN: He has referred to the fact that he has a group doing --

PROF. MEISEL: There has been mention



in the House debates that there has been a senior committee set up to consider the problems. That is probably the same thing as the task force.

PROF. McWHINNEY: They asked a specific person to head it and he declined it for quite proper reasons, one of which was conflict of interest. He is doing another big job for the Federal Government.

PROF. FOX: The thing that concerns me about this list is that there are a lot of economists on it; and although it is an exemplary profession I think we might get into some very involved discussion about abatement points, and I don't think we want to spend a great deal of time.

THE CHAIRMAN: That is quite right, Paul. What do you want to talk about with these people?

PROF. FOX: I can begin negatively and say I don't want to talk about abatement points, problems that people have gone over in fine detail with these people for weeks.

DR. FORSEY: Well, I have lost some interest after seeing this list. I would have expected that if we wanted to find out something about what is being done to the constitution that we would find somebody from the Department of Justice.

THE CHAIRMAN: There is no one there



from Justice.

DEAN LEDERMAN: I am surprised the new Deputy isn't listed, Mr. Maxwell.

PROF. McIVOR: I would be surprised to find that the Department of Justice hasn't been pushed on this question.

THE CHAIRMAN: When I asked Hugo- about this, I asked directly. I said, "I read in Hansard the other day a reference to the establishment of a task force under the Minister of Justice", and I said: "Could you tell me who it is, what they are to do?". And he said, "Well, that is doubtless a reference to the work that is continuing in the Department".

PROF. FOX: Mr. Chairman, I don't know if I can say anything more which would be germane. I am speaking in favour of postponing it because I would have to come in June; but it does seem to me we do not really know what we are going to ask these people and we do not know whether the questions are likely to be answered.

THE CHAIRMAN: I think that is a very important point. I am a little worried about that. With the Quebec thing it was entirely different for two reasons, first of all because there is a greater parallel in the sense there are two sets of provincial people talking, trying to talk about their common or



uncommon interests; secondly, there is no situation, so to speak, between governments as presently exists between Ontario and Ottawa. Therefore, I think it is very important to consider the kind of meeting we foresee here or would like to foresee here, and, having decided that, to consider what is the optimum time.

PROF. McIVOR: Mr. Chairman, has there been any discussion at all with respect to the agenda? Has Ron Burns any?

THE CHAIRMAN: Charles, have you had any?

MR. BEER: I just had one letter at the end of which he said that we should begin talking about the agenda and perhaps some points would come out here, that people here might have certain specific things; as in the case of the last meeting, the agenda was more or less left to us, to the Committee, and that was the point that he felt would probably be followed although he wasn't so sure that we would perhaps want to talk culturally. But it was left open.

PROF. MEISEL: I am getting a little anxious about this thing. The people who are coming from the Government are -- I know most of them -- are highly competent people but the only one that I can think of, if I can recall



the list, Crawford is not likely to have had very much to do with constitutional matters. Gordon Robertson. Now, Gordon has worked on it.

~~THE~~ CHAIRMAN: And is.

PROF. MEISEL: And is working on it. But the absence of anybody from the Department of Justice is really staggering and if Beetz is not coming from the Council office -- Beetz would know what he is about certainly, in this field, and then it looks like a worse gap than ever.

THE CHAIRMAN: Excuse me, John. Would you like to phone Ron Burns and find out the other people who were invited apart from -- you can take this letter and find out who else were invited.

PROF. MEISEL: I was just going to say that I have had no formal contact with Burns except that his office is two doors from mine and when we pass in the corridor he tells me something. About Beetz, he told me Beetz had accepted.

~~THE~~ CHAIRMAN: Not in the letter which he sent on May 17th.

MR. PERRY: Could I ask what general criteria Ron Burns may have applied in choosing his invitation list?

THE CHAIRMAN: Look, you had better



tell Charles to save himself a call because I just remembered that Burns' letter to me included a list of those invited.

Gordon Robertson; Bryce, Deputy Minister of Finance; Deutsch, Chairman of the Economic Council of Canada; Davidson, Secretary, Treasury Board; Willard, Deputy-Minister of National Welfare; Cote, Deputy-Minister of Northern Affairs; Isbister, Deputy-Minister of Energy, Mines and Resources; Crawford, Deputy-Minister, National Health; Kent, Deputy-Minister of Manpower and Immigration; Hignett, President, Centreal Mortgage & Housing; Duffett, Dominion Statistician; Shoyama, Economic Council of Canada; Gallant, Director, Federal-Provincial Relations Division; Gotlieb, Legal Division, External Affairs; Johnson, Finance; Beetz is here -- Beetz, Privy Council Office; Steele, Under-Secretary of State; and still no one from Justice.

MR. SEGUIN: We were told that Cadieux had refused but he is not on the list.

PROF. McWHINNEY: No, that is a list of to be invited.

THE CHAIRMAN: Yes, that is a good point.

MR. SEGUIN: Could we have a photostat of that? Have you people machines here?

THE CHAIRMAN: Sure.

DR. FORSEY: That is a very heavily



weighted list of economists. I don't want to run down the profession to which I once belonged, in a haphazard fashion, but it looks to me we might be getting ourselves right into this abatement points business and very little else; and I don't think that is the most useful purpose of the exercise. I do not say that financial relations ought not to come into it at all, but it seems to me the thing should be vastly broader than this. I think there are not many people who would have anything to say of value on constitutional questions. Beetz, yes. Possibly one or two of the others. George Davidson is an excellent person but the others, there are Social Welfare people.

PROF. BRADY: The economists are interested in the constitutional. The Federal-Provincial relations. Steele would definitely; Johnson would definitely; and Gallant definitely. These are people who would be very much conversant with the Federal-Provincial problem in its constitutional as well as in its economic aspects. I only mention this. I don't think it is a list simply of economists.

MR. PERRY: Is this a list that has been devised on Ron Burns' initiative?

THE CHAIRMAN: No. What happened was Ron Burns consulted earlier with Robertson and Bryce, who were selected, I presume, as the



representatives of the senior officialdom, and it is my impression - Bill, you may be able to correct this if I am wrong - that this list evolved through discussion, Burns, of course, knowing all these people pretty well, but they were really nominees or at least suggestions of Bryce and Robertson.

DEAN LEDERMAN: I haven't talked to him about how he did this but I presume this is how he would have proceeded, that this list originated in Ottawa with the people he consulted.

MR. PERRY: It is a little funny that we got this far without very many objections.

THE CHAIRMAN: All he said was - the meeting will be concerned with a free, informal and private exchange of ideas and opinions on several matters of interest in the federal-provincial field, fiscal, economic and constitutional.

I think he must have meant to say presumably, "cultural, economic and constitutional", and followed the earlier pattern. I don't know.

DR. FORSEY: There ought to be more lawyers.

DEAN LEDERMAN: There is some kind of shake-up going on in the Department of Justice. The new Deputy has just taken over.

--- (Discussion off the record)

THE CHAIRMAN: Well, if this list was



proposed by Robertson and Bryce, as it was, I think, one doesn't like to second-guess motives, but it would look to me as if they must have steered away from this because of turbulence.

MR. SEGUIN: Well, either that or it has occurred to me that Ron Burns' interest has been very largely in the economic area and I think it is just possible that --

THE CHAIRMAN: Could be.

MR. SEGUIN: -- that the idea never came up that some strong group from Justice might well be asked, and I think we should convey this reaction to Ron and see whether there is any possibility of bringing in one or two people. Although I am not as optimistic as some about the persons, I think there are quite a lot of very competent people, even in the constitutional area.

PROF. McWHINNEY: Your people determine your agenda. The Quebec-Ontario meeting was successful because the people with the background are really focussing themselves on the problems. If the Federal group at this next meeting is the so-called task force then the same thing will happen. If it is, as it seems to be, a prestige-heavy list of very important people but not particularly focussed on the federation debate we are going to have an interesting discussion but it is not going to be terribly related to what we



have been doing.

PROF. SYMONS: I don't think it is a well focussed list from Ottawa, Mr. Chairman, from our point of view of the purpose of the meeting as we had certainly thought of it. I think it is impossible to do anything but proceed with such a distinguished group as is now invited and has accepted; but really it is regrettable that there wasn't a little more consultation with this Committee by Professor Burns before he proceeded with this invitation list. I think one could very happily, for example, with respect, swap the President of Central Mortgage & Housing for someone from Justice or from Cultural Affairs, the area of the Canada Council and so on.

DR. FORSEY: Could I suggest, Mr. Chairman, I think Jean Laselles who is probably quite close to Burns and has worked with a lot of these people in Ottawa, he has probably thought in terms of people he knows and people he consulted. Bryce would also think of these people. I have got a note of the ten you said were to come, eight are really economists. I think Tom is right, you cannot offend these people and say you can't meet with economists; it is some kind of racial discrimination; but we could suggest a supplement of, perhaps, one or two other people. If we look down the list I think everybody that is coming, Robertson himself and Steele, are really involved



in economics. Bryce, Deutsch, Kent.

DEAN DILLON: There is another point that goes beyond who is to be invited, and that is the outcome of this Kingston meeting could have very, very serious and important bearing on the Confederation Conference in view of the fact that, especially in view of the fact, that the Federal Government has taken the attitude towards it that it seems to be taking; and regardless of whether we go as individuals or not, we are members of a Committee which has a very special relationship to Prime Minister Robarts, and who, of course, is the author of the Conference, and surely it is not possible to foresee accurately the outcome of this meeting. It might go well and then again it might not. In listening to this discussion I can think of more reasons for not having the meeting before the Confederation Conference than for having it.

PROF. SYMONS: Mr. Chairman, coming to the very nature and rather special nature of the list of people invited from Ottawa, I would think if we proceeded it would be wise; and, indeed, that we consider some fairly carefully selected additions to the representation from Ontario, drawing upon probably the senior civil servants and advisers of the Ontario Government outside this Committee. In truth, I don't



think that our Committee, as it presently stands, is adequately equipped to meet with this body. They are just not comparable groups, I believe; the fields don't mesh that well.

DEAN DILLON: Even if we sent a team it doesn't take anything away from the delicate timing.

MR. PERRY: I would say I have known some of these people for 25 years and I would say we are their equal in every way.

MR. ~~SEMONS~~: Mr. Chairman, I may have the wrong idea here but what I know of most of these people, it is true that a lot of their work is in the field of economics, but the problems that a man like Bryce has had to deal with in the last thirty or forty years are directly touching economics, but his terms of reference are very much the same again as the terms of reference that we employ, and I think you can say this for almost all of these people. They are not economists, they are not thinking only in economic terms; they are people who, presumably, are to a very great extent the power lines in the Federal bureaucracy. They cannot always shape themselves into constitutional, economic and cultural committees. When they have problems they have to tackle these problems as they present themselves to the Federal Government; and to that extent I think that we



are making a very false distinction when we try to fit them into the kind of structure that we may have evolved because it happens to suit us.

PROF. McWHINNEY: I think this side of it is not a serious problem. I think Dean Dillon's problem is a much more serious one. I think what happens here cannot help but have some effect on what happens later, and I think we ought to be very much aware of this. I don't think we can fall out. I think if Ron Burns had to write to them and say the Ontario people are all busy, this would have to be interpreted entirely in terms of the Conference. I wouldn't write down Tom's point that this is a power group, and if you want to meet with them you have got to meet Deputy Ministers at this stage. It worked out well with our meeting from Quebec because, while it was a power group, there is a difference. The nearest analogue to it is a policy planning committee, no power responsibility but giving policy advice, and I don't think you can really have a policy planning group when you meet with a power group, you have either got to have Federal people to add their task force or our group has got to be supplemented by Deputy Ministers of the calibre we had this morning.

THE CHAIRMAN: That was intended. I am



sorry that something has gone a little afoul between my office and Professor Burns. My circular to you was to get your impressions as to whether we would be able to muster a representative meeting and I thought Burns would then take it from there, but there seems to have been a mix-up. It is unfortunate. In any event, I was waiting until that stage had been passed and until we had some idea of what we wanted to talk about, and then I was going to suggest half a dozen senior civil servants, as we had before, from the Ontario group, depending upon what was to be discussed, and I have a list of proposals, including people like Rendall Dick and others.

PROF. McWHINNEY: And Palmer from this morning too.

PROF. BRADY: We will need to scrutinize very carefully the agenda and have, I hope, a fairly decisive voice in what the agenda is going to be. I think that is most important now.

PROF. MEISEL: I would hate to be in the position of interpreting Mr. Burns' views because, as I say, I pick them up by corridor consultation as we have called it; but there are two points to be made: one is I think Mr. Burns is hoping that we would make some very concrete suggestion about the agenda;



secondly, that he also plans on inviting some Queen's people. Just two days ago he stopped me and said, "What do you think about Dave Slater coming and Hugh Thorburn?", both of whom sound like excellent people. But, again, I have a feeling that Ron Burns' universe is not necessarily our universe, and there is a slight lack of direction that ought to be. I think perhaps Ian and Ron might have an idea and really get some of these points straightened away.

THE CHAIRMAN: Part of the problem here is that we are trying to use Burns to be the broker in a meeting and he doesn't know whether he is the broker or principal, I think.

DEAN LEDERMAN: I do think that this group of people, it is a Federal group, what I know of them, who can handle almost any kind of agenda we want to put forward, an agenda heavily leaning towards constitutional matters. There are certainly many people here who would be at home with them. I don't think we need fear that this is a highly specialized group.

DR. FORSEY: Well, I don't see for the most part here anybody from their end who can meet on equal ground with people like Dean Lederman and Professor McWhinney. It seems to me still lacking. Now, most of these people are extremely competent people and



extremely well informed. But, just looking at them, is John Deutsch giving very much of his time and energy to constitutional questions now; is George Davidson, is Crawford, the Deputy Minister; Is Tom Kent, Hignett? I doubt it. Or, Duffett, Shoyama? None of those people. It seems to me they are closely occupied with other things for the most part and are very amateurish in the whole question of constitutional law and practice. It seems to me it ought to be supplemented; if our side needs supplementing, from the ranks of the senior civil servants of the province -- I think it does -- then it needs supplementing with a few people who are really highly active legal technicians; though this is probably denigrating them, not simply with people who have en route had something to do with matters of this sort, who are not professional constitutional lawyers.

PROF. BRADY: There is danger in adding any more economists from our ranks or from Queen's ranks. If you add Dave Slater, he is an economist but he is going to want to talk about economic matters; and I think this probably reflects Mr. Burns' own preoccupation with fiscal problems and economic problems. My feeling would be, in reference to Dick's point about the implications of Mr. Robart's conference, we are really walking on eggs here.



It seems to me rather unorthodox. It will not be Deputy Ministers from Ontario meeting; they are Deputy Ministers from Ottawa.

DR. FORSEY: If you look at the list and match that list against this list of people invited from Ottawa, I don't think they match.

~~THE~~ CHAIRMAN: Well, I go back to these two points: what, in your view, should we be talking about with whatever Ottawa group we meet and, following that, when is the right time?

DR. FORSEY: Well, I think we ought to be talking of the kind of thing that is here. Item No. 6 is finance, and economic resources; that is one of seven. I would think part of the value of this thing for us, and certainly for the Premier of the Province, would be to find out if we can, something about what direction people's minds are taking in the Dominion Government on these various questions which we have got in front of us.

THE CHAIRMAN: Well, this is the thing I mentioned. They have a certain philosophy now, as I was mentioning this morning, and another point of view is that it is not an appropriate philosophy of the day that you can, among officials, see this kind of thing talked right out.

DEAN DILLON: This is my point. Just



going on what Eugene says, I think we would be most unwise to try to find out what they think about certain things that are directly related to the Conference on Confederation because I mean reaction from Ottawa, of the Federal Government, might be such that any chances of success for the Fall would be --

MR. SEGUIN: Well, I think we ought to bear in mind one thing, that that Conference is going to be a public conference and nobody is going to be able to say anything. You know, if we are going to be realistic about this, at a public conference do you really expect the Federal or Ontario people to say anything that they haven't already said?

DR. FORSEY: This autumn conference is going to be the opening shot. If it does any good it later will lead to other exchanges, some of which might be private, and this is really going to open up something which could grow; but to expect the autumn thing to cover any points with any sort of genuine attempt by either side to be frank and forthcoming about one's own position, I think this just couldn't happen. I think there is going to be no overlap to speak of.

DEAN DILLON: How do we know the Quebec conference is going to be private? The last one was not.



MR. SEGUIN: Well, I think it is a fairly useful exchange where we can all talk about the things that we think are relevant to some of these problems. A point we made before is that there seems to be an ill-perceived difference between the outlook between Ottawa and Ontario and it might be the sort of thing that can be discussed privately, off the record.

6

DR. FORSEY: And this is the kind of thing -- could I just add one other thing? I have added two points to these seven questions that you have outlined, and when I was going over them, I think again some of this might be discussed, the last particularly. I think it would be useful if people from Ottawa and Ontario, or, in fact, those participants of any conference, could discuss these things. If they all assume that there are certain common interests among the provinces and the Federal Government in Canada, that is an assumption we are all making, then I think we should all ask ourselves what new activities and new circumstances are desirable for the protection and furthering of these common interests.

I think to some extent in Canada there is going forward a partial dismantling of old methods of doing things and that we should think of the new things that can be done to give new



form to Dominion-Provincial relations; And also those relations among provinces; and I can see persons, Deputy Ministers and also from Ottawa, and somebody who is interested in this problem on the Ontario side, that it might be a very useful thing because they could talk in their functional terms of jobs that need to be done in areas of policy where present mechanisms no longer work adequately or there aren't any; what new things could be done to maintain Canadian standards of policy or whatever. So I think there are areas we can talk about.

THE CHAIRMAN: Did you say there were two points?

DR. FORSEY: The other one was 4(a). I had one that if change were to be made what steps should be taken to bring it about? In other words, if we are going to make changes in the constitution, you know, what particular sort of chain of events do we foresee to lead to it?

PROF. McWHINNEY: Isn't that covered under point 2?

DR. FORSEY: Well, partly it is.

DEAN DILLON: It is partly.

MR. SEGUIN: I think the agenda, if it is an agenda, under questions to be discussed, many of these would be admirable, I think, to discuss with the Federal people. For example,



3 and 4, I would like personally to find out what Federal officials are thinking about such questions. Quebec, we have had a discussion with Quebec civil servants; it would be a corollary to that discussion with the Federal people as to what their views are. It would help clarify, perhaps, our own thinking on those matters.

I agree with Eugene, I think as he said a little while ago, you take these questions and you have the basis of an agenda.

I think your additional ones are very good.

I think, however, the agenda must be very carefully worked out because if it is not this conference could be a bit of a flop from our point of view.

PROF. MEISEL: Last time our Toronto committees spent quite a bit of time ~~drawing~~ <sup>drawing up</sup> a tentative agenda, which I think the whole group discussed and I suspect we have to try to do something of the sort before this coming conference.

If there is not time for the whole Committee to do it, perhaps our executive committee could put its mind to it and do a serious job of preparing a pretty carefully worked out agenda, possibly even calling on various members of this Committee to open up



discussion on some of these areas.

MR. BEER: Mr. Chairman, I believe that Mr. Burns' idea was that the organization of the meeting would go roughly in the same way as the other meeting in Kingston went in which we would perhaps have two people or three, and one person from the Federal group, introduce a topic, the way we did at Kingston.

PROF. MEISEL: You see, that grew out of the work of our own committees. There was an important substructure of thought that led to our statements. We haven't done this in this case and I think perhaps we ought to.

MR. PERRY: Surely, Mr. Chairman, no one in this room takes for granted that they would approach this Conference without an agenda or a carelessly made up agenda. What are we saying here? Surely we all agree we have to have the best agenda we can devise. Do we have to sell each other this for an hour to convince ourselves? I agree with them heartily.

PROF. FOX: I think it is a matter of what the actual items are to be on the agenda. For instance, is it realistic to discuss cultural problems with this group? I can see us discussing with Steele whether or not the Province ought to have a television educational network since the Secretary of State has been



involved in this; but are the other gentlemen going to be interested in that?

MR. PERRY: I think they will be, whether we like it or not. This is an influential group in Ottawa.

DEAN LEDERMAN: This isn't so different from the Quebec group. There were a couple of lawyers in that group, but that is all.

PROF. McWHINNEY: Except they were recruited by Lesage from outside. It was both a policy group and prominent civil servants' group whereas this is a straight career civil service group.

DEAN LEDERMAN: But it is also a policy group.

THE CHAIRMAN: But there were no members of the Attorney General's department of Quebec present.

DEAN LEDERMAN: That is right, there were not.

MR. SEGUIN: I know this is not called the task force but when you say that some of them don't know about cultural matters I may say this is the same group that has recommended that the Government of Canada establish a high school for French-speaking students in the City of Ottawa, at the expense of the Federal Government.

DEAN LEDERMAN: Gordon Robertson is



about to take his whole family to Quebec City for a year.

MR. SEGUIN: This is a force meeting regularly because I know Cote told me.

DEAN LEDERMAN: Cote's report on the constitutional position respecting Fisheries is a classic.

PROF. MEISEL: I think each of these people has had to deal with constitutional problems in a very trite sort of way.

THE CHAIRMAN: Could I try to sum up this discussion. I take it there is general agreement to proceed with the suggested dates; secondly, that we could suggest that there might be one or two additional people added on the technical constitutional side or from the Department of Justice; and, thirdly, that this Committee should take some active part in preparing the agenda. And that leads to the question of how that is to be done.

Do you wish to have the research policy sub-committee, as we call it, come together, or would you like to give some time to this this afternoon? What would you wish?

DR. FORSEY: I think it should go to the research policy committee. We have got a lot of stuff we have to deal with here this afternoon. We shall not be meeting again until the Fall --



THE CHAIRMAN: I presume we will be meeting in June, the regular meeting in June.

DEAN LEDERMAN: That is a little late for the agenda, though.

THE CHAIRMAN: Well, quite. That is the problem. The 10th, I think, is a Friday.

DEAN LEDERMAN: I should think the policy research committee, being a relatively small group, is the right kind of group to put the agenda together. You can't even do it in three parts and get it settled; this Committee can't do it.

PROF. BRADY: I would suggest, Mr. Chairman, that we have the Secretary do a draft - we have some views - and then submit the draft for consideration by the Committee.

THE CHAIRMAN: All right. Well, I suggest another item that I would like some views on, and that was my impression that after a quieter, calmer period in Quebec, some very strong views were now coming out of that Government that we might well take account of.

I mentioned four examples of recent statements of a very strong character whose juxtaposition suggested that it was part of a general pronouncement.

Is there anyone who has been following this in a way that he has arrived at any views?

DR. FORSEY: Mr. Chairman, what was



the one about transport policy? I missed that one altogether.

THE CHAIRMAN: What has happened there, as you know, a new Federal Transport Commission is being established and this is going to take a very active part in the whole network of transport and the relationship of the different parts of the network, and the Minister concerned in Quebec gave a speech and made a statement in which he warned Ottawa not to interfere in a myriad of ways affecting provincial transportation policy, both because of the threat of interfering with provincial activity in transport but, more importantly, because transport policy was so closely related to regional development policy and resources exploitation.

DR. FORSEY: What exactly is he driving at?

THE CHAIRMAN: Well, that was really my question.

DR. FORSEY: What precise limitations is he proposing upon the powers of the Transport Commission?

THE CHAIRMAN: This was only a general statement, but --

DR. FORSEY: I have seen suggested, as I suppose everybody has, that this is all pretty much diversionary tactics on the part of Mr. Johnson because of various difficulties



that have arisen internally and that he perhaps shouldn't perhaps be taken too seriously. Are there any ideas on that? I don't know.

MR. SEGGIN: I know that it is going to be harder than easier in future because now both parties agree.

DR. FORSEY: If this Quebec Minister of Transport is really proposing that the powers of the Transport Commission within the field of Dominion jurisdiction are to be curtailed, that is a very serious matter. It strikes away the very foundations of our constitution --

THE CHAIRMAN: I think he was suggesting more that the Federal transportation policy be not applied in any way that would imply an invasion into Federal-Provincial transport territory.

PROF. MEISEL: On the general point, I think the Quebec Cabinet has likely had the same sort of trouble that other Cabinets have experienced with some Ministers who seem to be saying things that not all other Ministers share; and I think one would have to be very careful in distinguishing between, say, Mr. Johnson's statements and, say, those of Mr. Gables, and some of the others who tend to speak without, I think, always having the support, certainly of the Prime Minister.

THE CHAIRMAN: Well, a much <sup>more</sup> explicit



one was the statement by Mr. Dozois, Minister of Finance, who certainly does speak with the voice of Johnson, and this was the announcement in the Speech from the Throne that the Federal Government proposed a joint Federal-Provincial study for examination of problems of urban development and community development and housing, and Mr. Dozois made a very strong statement in which he said this was totally improper; this was a provincial matter period.

This is a rather interesting and important one because, as you know, there has been a great deal of discussion in the rest of the country, as there has been in the nation, about the Federal Government taking a much more active part in urban development, urban renewal and community planning and the whole range of metropolitan urban problems.

PROF. MEISEL: There has also been a change in Quebec in the sense that there has been a slowing down considerably in the development of regional economies and regional development projects. This could be tied in to some domestic differences, too.

THE CHAIRMAN: And there is to be a Federal Government task force set up under the direction of Mr. Walter Gordon to co-ordinate Federal-Provincial matters bearing on community development, urban development and so on. A



senior official in the Department of Finance whom I asked about this read about it in the Globe and Mail the same morning I did.

PROF. BRADY: It is apparently just as elusive as the task force we were talking about.

THE CHAIRMAN: They seem to be very elusive creatures.

MR. PERRY: He mentioned one about the tone of the feeling of financial institutions. Is this just shadow-boxing that is going on?

THE CHAIRMAN: No. That one, I think, is a real and genuine administration problem, administration and constitutional problem, and I think there is quite a bit of goodwill involved in that discussion. We have had many discussions with Quebec, and both of us with Ottawa, and I think in that one everyone is working quite honestly to work out the best arrangements.

PROF. FOX: My own feeling on the general situation in Quebec, Mr. Chairman, is that it is getting better and worse at the same time. It is getting more complex. One sees a number of forces at work on one side and a number of forces at work on the other. On one side you have Expo which is knitting in a number of people to the national structure in Quebec, which might not otherwise



be done, by the presence of people, the mixing of people, of the two groups of Canada, and the emerging of Montreal as a place within Canada, a place within the world. And then I see a certain disintegration or generation of differences between the Union Nationale that I think are beginning to appear after the sort of honeymoon period that follows the election of a new group to power; and one sees controversy between Cabias and Johnson on the censorship of films, for example -- a very real difference on policy -- here is a split between people on public morals, people bound together regardless of political wish; and other differences, education, and the tendency of the Johnson government to go back on the developments that the Liberals made towards consolidated secondary schools. This is within the Union Nationale as well as within the province in general. That in a sense, I suppose, may act as a force to work against the militants in Quebec, quasi-separatism.

At this stage I view quite seriously the developments that have occurred within the field of foreign relations in Quebec: the insistence on Johnson meeting Emperor Haile Selassie by himself and the insistence on Quebec's presence as an international entity in the field of diplomatic relations and the



conflict of the Belgian issue. That is another matter in which the Federal Government was misguided. I think there are elements there that certainly indicate that in Quebec's insistence on its own foreign presence there is a much greater emphasis.

We see each step occurring and do not really get the long-run point of view and I think there is definitely an outward movement; whether it is conscious and guided I don't know. And Johnson going over to see De Gaulle and spending four days with him. The fact that De Gaulle would spend four days with him is significant; and I think this would be maximized when De Gaulle comes to Expo. So developments of that sort, it seems to me, are rather discouraging. I don't know how one makes any kind of distilled judgment out of this other than to say it seems to me more complex than it was even a year ago.

THE CHAIRMAN: Do you mind elaborating on the Belgian agreement?

PROF. FOX: Well, I don't know how others here would interpret it. My own feeling was that when the Federal Government entered into the cultural agreement with the Belgian Government it probably did so deliberately, knowing that it was overlooking Quebec, what interests that province would have in the



educational and cultural field and probably rather secretly delighting in putting the Province of Quebec --

PROF. CREIGHTON: It did not overlook Quebec's interests.

PROF. FOX: I have the feeling that they could not have been conscious of the fact that Quebec would object to this.

PROF. CREIGHTON: But the benefits of the treaty are open to everybody in this country.

PROF. McWHINNEY: The point is that the Government broke rules which it, itself, had set up for cultural agreements with countries. A so-called umbrella agreement was worked out between Martin and Lesage in relation to France. It established certain procedures and it was quite patent that the Federal Government did not follow those procedures in relation to Belgium, didn't even discuss it with Quebec. It was perhaps atoned for by Mr. Tremblay's behaviour and the Quebec Cabinet's behaviour in retaliation but it was very unfortunate. I think somebody in Ottawa thought we might take the heat off Vietnam by making diversion in the cultural affairs area. I think it is very unfortunate. If you establish an umbrella agreement, rightly or wrongly, it was established by agreement



between Ottawa and Quebec and was then unilaterally departed from for no apparent reason other than carelessness or a deliberate desire to create a diversion. I think that was a pity. One can only conclude that Mr. Martin was worried about Vietnam or else some other things.

DR. FORSEY: It seems to me that in the one case Quebec jumped the gun on the Dominion and the Dominion jumped the gun in the other.

PROF. McWHINNEY: The umbrella agreement was created after. Unfortunately there were subtle differences on the nature of the procedure so established. If you take the trouble to work out such a clause, I think the last thing you should do six months later is disown your own clause.

DR. FORSEY: Is that what they have done? I thought the umbrella idea was that they made an agreement and if the provinces wanted to do something with the four corners, fine.

PROF. McWHINNEY: Well, it is not an umbrella agreement in which ---

MR. PERRY: What do you mean by "umbrella agreement"?

PROF. McWHINNEY: An umbrella agreement says we will make an agreement permitting our



provinces to exercise any delegated authority necessary, to give any specific province --

THE CHAIRMAN: And this applies to all provinces.

PROF. McWHINNEY: Yes. It was no doubt specifically for the Quebec situation but it was done as --

THE CHAIRMAN: Our people want to discuss some problems in the exchange of technical personnel with France and, as I understand it, this is quite in order under the Federal terms.

PROF. McWHINNEY: My view on that, as I said before, I don't really think this area of cultural agreement is in the international field at all. It seems to me Quebec made it so under Mr. Lesage's symbol of prestige election. Once it was done, after a certain amount of trial and error, the umbrella procedure was worked out. It made a certain amount of sensation politically - and it is a pity, as I see it, that Ottawa apparently without consulting the Quebec Government made a deliberate agreement and departed from the forms that it had itself established, except that it isn't a serious matter. Again, it isn't really an international affair anyway; but except for that situation one would say that it was very, very unfortunate. I think the statement that



it breaches the rules of co-operative Federalism - this is Favreau's reaction - is correct.

I did not take the Belgium affair very seriously. Anyway, I think one of the good results of it has been that there was a reaction in Quebec itself to the Quebec reaction to Ottawa's error. There was the invitation for De Gaulle to come up, and, one of the interesting things in the French language papers, that it was very bad taste and ill-mannered on the part of the Cabinet Minister concerned.

THE CHAIRMAN: Mr. Johnson apparently said to newspaper people, in reference to the letter that was allegedly written by his chief of protocol, that if it were in fact done it <sup>had</sup> was/form.

PROF. McWHINNEY: I think the important factor was a strong executive authority. You see it in Montreal, in the municipality, you have got a first class executive, and this is one of the interesting things happening in Quebec City. Johnson has turned out to be a first class executive, a man with very considerable control over his Cabinet and I think - was it Paul's comparison to the present Federal Cabinet - there is a great deal of truth in this. Mr. Gabbias made a statement but it was very clear that he represented Mr. Gabbias and not Mr. Johnson, and



I think it has been made clear that Mr. Tremblay, although he is the most colourful personality in the Cabinet, is under control to a sufficient extent by Mr. Johnson, much more so than Mr. Gordon vis-a-vis Mr. Pearson.

MR. MAGONE: Maybe the Belgian agreement is aimed at the Walloons.

PROF. McWHINNEY: Well, it would cover.

MR. MAGONE: It would cover it, sure it would. Nothing to do with Quebec.

THE CHAIRMAN: Well, it is very interesting because I think there is another umbrella in the process of being constructed. The Prime Minister of Canada has written to all the Premiers suggesting that co-ordinating arrangements be worked out to cover the field of foreign aid, so that provincial activity presumably might be extended in that realm. We are just in the process of looking at that one.

MR. BEER: Mr. Chairman, I would just like to bring up one point with respect to the Belgian agreement. When I went out to find the Quebec Hansard - I think it is there; it isn't there now - it is reported Mr. Lesage said that, in criticizing the Johnson Government for their attitude towards the Belgium matter, he said that they had tried to begin discussions with Belgium with respect to a cultural exchange agreement but that the Belgians had told them



that they were only interested in doing it through Ottawa, and Lesage said simply "There we left it"; and they seemed to stress this. I was just wondering about the point, about how far this has changed. There seems to be an element there that "we are quite upset about the way that matter had been handled" and that the Lesage Government, it appears, had accepted that if the Belgians wanted to do it through Ottawa, there was nothing they could do about it and they had to agree to it.

DR. FORSEY: If the Belgians say "We do not propose to recognize a constituent member of the federation", well, all right, that is it, and neither Mr. Johnson nor anybody else can cast his shot over the Belgians.

9 PROF. McWHINNEY: You have made your umbrella, you have delegated sub-agreements, if you wish, to constituent units within a sovereign state, and it is perfectly sensible, it has a few extra complications, you have got to deal with more people, it takes more time, but it seemed to me quite an intelligent compromise in the French situation. I was a little surprised they did not do it in relation to Belgium, more particularly, as the Chairman mentioned, with the Walloons, and I believe also Africans the Franco-Phonic/-- one can only conclude it was an aberration or else a diversionary tactic, part

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of the relationship in the Confederation debate,  
in which case I think it is a pity.

DR. FORSEY :                               What about the  
Belgians?

PROF. McWHINNEY: No, it would be for Canada to establish the methods of implementation. I can't believe that Belgium would say that necessarily --

DR. FORSEY: Well, therefore Mr. Lesage was telling an untruth, was he?

PROF. McWHINNEY: The umbrella agreement was worked out just before the Lesage Government went out of office. This may be a preceding approach to Belgium but the present negotiations with Belgium are relatively recent, apparently a matter of the last month or two.

DR. FORSEY: The Belgians may be as  
unaware of these fancy umbrellas.--

PROF. McWHINNEY: But Ottawa is not.

DR. FORSEY: -- as English people used to be of the implications of Dominion status forty years ago. They accept it but they weren't --

PROF. MEISEL: Surely the fact that the controversy developed at all, as it has fairly strongly, that had the Federal Government been more sensitive they would at least have consulted the Quebec Government in the matter of the exchange. I do not see how you can



construe this other than falling to some extent under provincial jurisdiction:

PROF. SYMONS: They either were not thinking properly or there was an element there of deliberate manoeuvre. The content of the treaty with Belgium is different from the content of the treaty with France. It is specific. It does say a good deal of substantial importance pertaining to education and to university affairs, about the equivalence, let us say, of degrees, for example. It deals with these quite specifically. It proposed to set up eventual machinery to deal with universities and other educational matters. So it is important. I think there is good cause, in fact, for a Quebec Government to feel concerned.

One cannot really escape the feeling that it was a pretty deliberate action and the treaty does, in fact, go dead against current understandings, not only about the procedure for cultural treaties, the courtesy and consultation procedure, but also in the appropriate role of the provinces in educational matters. It is a very peculiar episode.

THE CHAIRMAN: Well now, I suppose we will never know whether the umbrella was meant to be a parasol or a "brollie".

DR. FORSEY: Another aspect of the situation is what is going to happen now with



this speech of De Gaulle's in Paris in which he talks about "all Frenchmen, wherever they live". This has inauspicious overtones for anybody who remembers anything about the ~~Volk~~ ~~Deutsche~~. It has very much of Sudeten Germans. If there are repercussions here, if he starts taking an interest, as President of the French Republic, in what happens here, we may be in for a rather interesting time of it; as President of the French Republic, interest in French-speaking Canadians.

THE CHAIRMAN: We will await the outcome of Britain's application to the European Common Market.

I was remarking yesterday, I heard Ted Heath speaking at a luncheon the other day and the Chairman, in introducing him said, "I want to quote the words of a distinguished Frenchman, now dead", and then went on and quoted from Victor Hugo in 1885. Mr. Heath got up and said, "Mr. Chairman, when you said you were going to quote from a distinguished Frenchman, now dead, my hopes rose momentarily until you disclosed it was a figure from the past" all of which I thought was pretty outspoken, even in jest.

DR. FORSEY: Well, let us now hope Mr. Wilson will not now make a speech in which he talks about casting his mantle over all those



who speak English.

THE CHAIRMAN: Well, I think we will leave that and perhaps we can go to the main item of the afternoon. Perhaps we should pause for a minute, we have a new reporter. We might take a break.

--- Short recess

THE CHAIRMAN: During the interval one or two people have mentioned that perhaps they are uneasy about the timing of the Kingston meeting, they did not express themselves strongly enough during the previous discussion. I do not want to go back on this at any great length but I think if there are those who feel it might be in the broader context prejudicial to the Confederation of Tomorrow Conference, to be speaking at this time, I think we should hear any such views before we abandon that completely.

DEAN DILLON: Mr. Chairman, I was the one who spoke about this. I have already said how I feel and all I would like to add is to say I am sure that the Committee feels that there is no other course but to accept this invitation for this particular time.

PROF. CREIGHTON: It isn't for me, Mr. Chairman, because I can't go.

PROF. BRADY: Unfortunately we don't



know when the Conference - what is it, Conference for Confederation or Confederation of the future? - when it will be held.

THE CHAIRMAN: It won't be before the middle of October and I wouldn't think any later than the end of November.

PROF. BRADY: It makes it so difficult then. We cannot go in June, we could go at the end of September or something like that. I think if we are going to request a change in time we ought to have some definite idea in our mind, don't you think, as to what that changed time should be? We don't want to say we prefer this thing after the Ontario Conference, do we?

DEAN DILLON: Well, we have all received a personal invitation to a conference in Kingston from Professor Burns. My point is that we seem to have arrived at the position today that we have no alternative but to accept this. I haven't answered Professor Burns' invitation.

PROF. BRADY : Neither have I.

PROF. McWHINNEY: It is surely not as open as that? My understanding was that Burns had indicated we had discussed general differences, had at least a collective interest in it. I take it he went up to Ottawa on that basis. It seems to me you are faced with the difficulty, if you do postpone it, you have got to have a



reasonably substantial argument for doing so.

I could think of a very plausible argument.

It would involve a bit of work if we decide on

policy grounds we would like this to follow the

Confederation of Tomorrow conference. My

suggestion would be we would say after

considering the agenda we feel we would like to

prepare position papers for circulation to the

Conference, and it is therefore necessary to

postpone it to the Fall. You would have to

do it on some sort of basis like that otherwise

it looks very unfortunate.

Burns, I am sure, has conveyed to his --

MR. MAGONE: I don't see how you can

say we have to prepare position papers because

we are not going down as a Committee.

PROF. McWHINNEY: I was thinking of

a plausible, rational reason for postponing the

meeting.

DR. FORSEY: On seeing the list of

people who were invited from the Dominion Government

I pretty well decided to write Burns and tell

him I am not going. I have a terrible lot to

do anyway. It is difficult for me to get there

and I am inclined to that. I don't think I have

anything to contribute to the conference that is

likely to take place and I strongly doubt whether

I should have the competence to benefit from it

either.



10

PROF. BRADY: I would like to express a very different view. I think it would be very useful for all of us to meet the Federal people and get an impression as to what their thoughts are on these questions, as in these questions to be discussed. I would like to hear what they have to say. I think this would be valuable for us and rather than impair the Ontario Conference I think it might strengthen us, make our position stronger knowing, as it were, what the Federal position is, as that position is expressed at any rate by the top civil servants. I see some advantages in it.

I think it was unfortunate that there was no discussion about the time before it was arranged so that the Conference could be arranged at a period when all of us could attend. Some cannot. I think it is unfortunate. I don't see danger really in this to the larger conference; on the contrary, I think it might be a real advantage to have discussion with these Federal officials before the other Conference.

MR. STEVENSON: I would like to add to it in favour of an earlier rather than a later meeting. I have some express reservations I heard about an early meeting that could probably be used as reservations against meeting at any time. I think the members, although they seem to be geared to one subject, it still does



not suggest in any way to me that discussion would necessarily flow into their programme of interests. I think in Ottawa there has been, amongst senior civil servants, a lot of discussion about some of the appropriate directions of Canadian federalism and I think from a group like this you will get a pretty broad spectrum of discussion on the kinds of questions that this Committee is particularly interested in. I do think too that certainly some of the potential members of the Federal delegation are not necessarily going to speak only from an agreed and advance Federal position. There are several in there who have different points of view and I don't think one needs to fear too much the possibility of the thing turning into a bargaining session or into a session which would put people coming from Ontario in a very disadvantageous position. I would be a little worried about a meeting going into the Fall. I think I agree with Professor Brady on the potential effect that there would be from contact at any early date and an exchange of views could do very much to help the growing, I suppose, coldness in relations at a political level between the two governments right now.

PROF. BRADY: I would like to just add to that that I hope Eugene will not decide to stay away. It would be most unfortunate if



he did.

DR. FORSEY: Thank you, Alec. I think I never will be missed. I never will be missed.

PROF. FOX: Mr. Chairman, I was pretty cool on the idea in the beginning. I have been talking to some of the people during the intermission and I hope that Eugene will be there too; and I certainly would like to go, on the assumption you learn something, provided it doesn't get into an involved economic discussion where it resembles bargaining. I think people like Eugene ought to be there.

THE CHAIRMAN: I think we had better carry on and --

PROF. MEISEL: Mr. Chairman, there is one other point before we leave the matter. If there are some people that we think ought to be there but who haven't been invited, there is no reason why we can't suggest to Burns --

THE CHAIRMAN: Absolutely.

PROF. MEISEL: -- and if Eugene can suggest - it is a bit of a loss to know - we want to know out of the list who Eugene would like to see there who hasn't been invited. I am sure this can be transmitted to Burns and I am sure they will be invited.

THE CHAIRMAN: Let me go to another realm. I mentioned this morning we have been giving some thought to the general reception of



the three volumes which we have now put into the public domain; and, quite independent of any comments in the Legislature, I had wondered from time to time - and indeed some members of the Committee had wondered from time to time -- whether we should attempt to prepare any fuller report as some form of interim statement by the annual report work committee. It might be of interest to many people. Recognizing on the other hand, the difficulty and perhaps undesirability, given the nature of our terms of reference, of producing a Committee report, there might be those among you who, after two years, felt that you would like to set forth a paper putting together your own views on the future of Confederation which would be helpful to all of us and, in turn, to the Government in preparing for the Confederation of Tomorrow Conference.

While those thoughts were running through my mind, I received a letter from Professor Conway who stated that he intended to devote his summer to the writing of an essay which would sum up and put together his own views about the future of Confederation, which were views based on his reflections and his thinking and his work as a member of the Committee for two years; and he said he would like to do this over the summer and that when he



finished it, circulate it to members of the Committee in the usual manner as other reports have been circulated; and he proposed doing quite a bit of work on it.

It occurred to me that others might well feel inclined to do that.

We will be doing that over the summer, the secretariat here, as our regular civil service function because we are going to have to present a series of views and series of positions to the government to equip them for discussions in coming months, and I wonder what --

PROF. CREIGHTON: You mean with respect to the Confederation of Tomorrow?

THE CHAIRMAN: With respect to that and to the general discussions that they will be involved in on a continuing basis.

DR. FORSEY: I suggest in connection with this business of getting other people's views on the record and filling any gaps that somebody should light a bonfire under Professor Watts and see if we can't get his study out of him that he was supposed to do. My main interest is getting out of Professor Creighton his paper on the Senate which I think was a great lack. I have a personal interest in this because I was reproached by Mr. Ryan of Le Devoir for not having discussed the Senate "in depth" as the cant phrase has it; the idea



is that I skimmed lightly over the surface because the other job was left to Professor Creighton.

THE CHAIRMAN: Well, Professor Watts' paper is rather overdue. Can you speak on behalf of your colleague, John?

PROF. MEISEL: I may go into that in the corridor.

THE CHAIRMAN: It must be a very interesting corridor.

PROF. MEISEL: It is full of debris.

DR. FORSEY: Corridors of power.

PROF. MEISEL: I don't know how close he is to completion. I know he has been working on it, although the last two weeks I would guess he hasn't been very close to it since his associate Dean end-of-term games have taken pretty well all his time. I would think from now on he will be free. I know he has been working on this because he has been hiding from his office.

THE CHAIRMAN: He has been in the corridor.

PROF. MEISEL: No, on the way from his office to his hideaway.

DR. FORSEY: It is an important matter because it is highly probable that at this Confederation of Tomorrow conference we should be faced with two or three schemes of reform -- so-called at all events -- and I think the



Government of the Province of Ontario should have before it some considered views on this thing, which it may or may not choose to accept. The amount of what seems to me dangerous nonsense which is being talked on the subject is formidable and if our Ontario Government is not well prepared, in the spirit of what I think elsewhere is called "saccarin amiability" breed something remarkably foolish.

PROF. MEISEL: Mr. Chairman, I shall deliver the rocket on Eugene's behalf and perhaps ask Ron to let you know how he is getting on.

PROF. CREIGHTON: And I shall undertake, with or without Mr. Ryan's favour, to get ahead with one of my own during the summer.

THE CHAIRMAN: Very good.

MR. STEVENSON: We have talked with Professor Watts about once a month and he has said it is very close to completion.

PROF. McWHINNEY: That is a standard academic answer.

THE CHAIRMAN: I would like too those who - and particularly others who have not expressed themselves formerly in background papers and so on - if there are any others who would like to work on such an essay during the summer, I think it would be very, very helpful to a balanced consideration of views in our civil service groups here and in turn the



Government. I do not know if you, Tom, and Cliff and others have a mind to.

PROF. SYMONS: Mr. Chairman, I think after our discussions this Spring that we were fairly close to a point at which it should be possible to do something further on a paper in connection with bilingualism perhaps, and I hope that this might be something that could be achieved in the next few months. Perhaps the cultural and educational sub-committee should pick up the threads there again. We have been a bit negative as a Committee and it might be helpful to convene once or twice.

PROF. BRADY: The cultural affairs committee is going to submit a report some time in the near future to the general Committee in which it will survey the problem of bilingualism, biculturalism -- what you will -- in Ontario, focussing of course on schools and education.

PROF. CREIGHTON: I think at that point, Mr. Chairman, I might file a minority report.

THE CHAIRMAN: Well, there might be more than one.

PROF. BRADY: Have you thought, Mr. Chairman, of endeavouring to get a collective document from the Committee or do you despair of getting sufficient agreement on it to produce a collective document that would be of use to



the Government?

THE CHAIRMAN: I think on every occasion when I find myself at the corner of Yonge Street and Queen Street at five o'clock in the afternoon and I think of the many movements in many directions that are taking place --

MR. STEVENSON: I think a great benefit of the number of individual reports, which might be very short, perhaps addressed to a set of agreed questions -- something like perhaps the ones which are attached to the agenda today -- might well, if we had seventeen very short comments on each of these points brought in, form the basis then of a fuller report which could be put together from them, although of course they would be expressing different points of view. You might then at least draw out from them the different threads of thinking on different questions.

THE CHAIRMAN: I don't think it is inconceivable to attempt a Committee report if the Committee wanted to do this. I think, as Don says, we have to start with a skeleton. We have to have certain issues in it. If we ended up with fourteen people agreeing on points A, B, C, and individuals dissenting and thirteen on E, F, G, and so on, I don't think that matters. The question is whether it is worth shooting at.

DR. FORSEY: When you speak of ~~wright~~ right



answers to questions, were you thinking of these seven specific questions?

THE CHAIRMAN: I only used that as an example.

DR. FORSEY: All of them struck me as being in the form of the classic "Have you stopped beating your wife?". There are very few of them I could have answered yes or no; I would have to be as laboured in the answer as the question was itself.

PROF. McWHINNEY: You can always answer "maybe".

MR. PERRY: If you were saying you did not want any more written material we would all go home and start writing! You are understating the situation, you are using the wrong approach.

PROF. FOX: While we are on this topic of referral, we really did not settle this point about who was going to address himself, or what group is going to address itself to the business of refining the agenda of the general meeting.

THE CHAIRMAN: I understood we had agreed on the research policy group.

PROF. ~~FOX~~ LIGHTON: O.K. The other point is - I do not know, somebody may have seen it -- Alberta has produced a white paper on human resources, which I got a copy of yesterday. I haven't had time to read it in detail yet but



I thought it might be useful to bring it to the attention of your staff. Maybe you can get copies, you could have this copy and multilith it if you want to.

DR. FORSEY: How relevant is it?

PROF. CREIGHTON: Well, it isn't really very relevant; it deals with human resources.

DR. FORSEY: What I have read of it, it has really quite the opposite approach, it begins from the conviction that free enterprise is here to stay.

PROF. McIVOR: I think it also purports to deal with the emphasis from material resources to the emphasis on human resources, and one of the difficulties is that it is written by a sociologist and virtually impossible to understand.

THE CHAIRMAN: Was this a commission from outside?

PROF. McWHINNEY: It is a government sociologist.

DR. FORSEY: That is worse still.

PROF. FOX: I don't want to prolong this point, but if the resources committee, or whatever it is called, is going to have to draw up the agenda, I think I should raise this one point because it ought to be raised, would we put on the agenda a question dealing with the National Capital District.

THE CHAIRMAN: Not until Mr. Perry



has brought down his white paper. Well, I don't know.

PROF. McWHINNEY: It really turns on the decision of the type of theme of the conference, if it is going to be a high policy issue.

PROF. FOX: I was just thinking of it as one item, people from Ottawa being there.

THE CHAIRMAN: I think so. They must have views, presumably.

PROF. McWHINNEY: One can think of Trudeau's equality, parity equality of the provinces theme.

PROF. FOX: I just thought I would raise it now while we are all here.

MR. PERRY: On the same point, Ian, where is the volume of traffic likely to be for the balance of the year on Federal-Provincial relations? In other words are there relatively hot issues which will inevitably raise their heads at this Conference, having in mind they are just the sort of thing that everyone will be thinking about at that time, or can we keep away from the day-to-day things?

THE CHAIRMAN: Well, I don't know. My own inclination would be to see us tackle the more fundamental general questions. Some of these I suppose will manifest themselves in the issues that are going to be hotter.



One is the foreign affairs question. I would think that the capital district question will keep perking along.

MR. PERRY: Must we take it you are probably going to ask this question? Well, I think - Mac and I are just having a word about this - do we take it that we have wiped the slate clean here on fiscal and economic issues? Of course, we have Burns' letter which does mention fiscal.

THE CHAIRMAN: Yes. If we are going to follow the same basic outline, and this is one of the questions I understood we will have to consider, if we are going to follow the model we had before, of cultural, economic and fiscal.

Well, then, it will be included.

MR. PERRY: What is new?

PROF. McIVOR: It is just that the terms of reference that Premier Robarts has provided for the Confederation conferences seems to be addressed to the broad discussion of the conditions and seems to rule out --

THE CHAIRMAN: Oh, for that purpose, but I don't think at Kingston we need to do that.

PROF. McIVOR: We do not need to be so closely orientated to this.

THE CHAIRMAN: I think we see those as two matters of mutual concern.



12

Well, returning to this item of the Committee paper or individual papers, are there any strong views one way or the other about the attempt to develop a Committee report of some kind?

MR. PERRY: We have been profoundly skeptical of this operation in the past. Is there something new that we haven't heard about?

PROF. BRADY: I raised this because I think it was in the mind of some of the members of the Legislature, that it was rather odd that there was not some more general statement on the problems of Confederation coming from this body of wise men. I think it was MacDonald who referred to our Chairman's introduction and said, "Well, now, if there is some very useful cogitation and thinking going on in the group that wasn't expressed in these papers, why didn't we get some sort of evidence of this?". The papers in the three volumes did not seem to convey that and, if I interpreted his comment aright, he was thinking it was odd that there was no kind of general statement coming from the Committee. Am I right in interpreting his comment? I think Don Stevenson was at the debate.

PROF. CREIGHTON: That goes back to the old essential problem. This is not a Royal Commission and we do not propose to give a



report necessarily I mean.

PROF. BRADY: Are we still adamant that we are not going to attempt to make some kind of general statement?

MR. BEER: I was at the debate also and I got the impression that the criticism was that there wasn't more opinions and views taken of matters in Confederation and that the papers tended to be very technical.

PROF. McWHINNEY: What do you mean by that, very technical? You mean "not expressing a conclusion, presenting both sides"?

MR. BEER: Not expressing overall views.

PROF. McWHINNEY: Not expressing a recommendation? Is that what you mean? There is a difference between a position paper which gives pros and cons and stops there, isolates the problem, and a thesis which presents an actual representation so that your feeling --

MR. BEER: Well, I wouldn't know how to interpret his comments. I think he maybe said the words "point of view" on the problems of Confederation. Now, whether that involves recommendations or not, I do not know.

PROF. CREIGHTON: You are using the words "position paper" in an oddly different way. I thought you were describing a paper in which you took up a position on certain issues.



PROF. McWHINNEY: On the contrary.

It is a phrase used in foreign affairs and international affairs to inform a politician to take a position.

PROF. BRADY: It is a paper which doesn't take a position!

PROF. MEISEL: To come back to the point that Professor Brady has made, it seems to me that we have one thing in common, members of this Committee, and that is our bonhomie and our goodwill. If we really wanted to bring out a statement to which we all subscribed and had the energy and time required to arrive at these definitions I think the content - because there would have to be compromises and putting down of opinions - I think this would probably be a terribly wearisome process which, in the end, wouldn't lead us very far. I think it would be more preferable if perhaps those of us who haven't yet delivered ourselves of any fundamental contributions, do so, and whoever wanted to could read through all this stuff.

THE CHAIRMAN: This is what I have in mind, and I assure you it has got nothing to do with the comments in the Legislature; it goes back to my letter of last week, and here is the way my thoughts had proceeded: we had published our three volumes of background papers and the Confederation of Tomorrow Conference is



going to be held. It seemed to me in the interval that it would be useful to the Government and to the public in general -- and the question remains whether these things -- both of these things, could be done; this might be only to the Government or it might be to the Government and made public. Since, let us put it in the simplest terms, the principal plan of the Confederation of Tomorrow Conference is to talk about the goals of Confederation as of this day, if this Advisory Committee were able to establish some opinion, collectively or among its individual members, in terms of what they see for the goals of Confederation at this time, and of the ten thousand individual items, took one, for example this point I mentioned earlier, "Do you feel that it is a good or bad thing to have a standard set of arrangements with all provinces or are there situations under which different arrangements could be contemplated?", so that, taking that as an essay on the goals of Confederation so to speak, would this Committee want to equip the Government or even the public to go into the Conference with that kind of backing as the outgrowth of your reflections over two years, collectively or individually? That was the thinking I had done on the matter.

DEAN LEDERMAN: I think, Mr. Chairman, we might as individuals, or groups of two or three



individuals who find themselves at very close agreement on rather specific things, we might perhaps sharpen up some individual or small group papers on specific things; but I rather share John Meisel's view and Professor Creighton's view that to strive for overall consensus among the seventeen of us is to pursue a will-o'-the-wisp.

DR. FORSEY:/ You just won't get it.

I am pretty sure they will vary very much.

I for one find myself able to dissent from the views of several people here. There are certain points on which I would find myself, between that X and this Y with probably no one.

PROF. McWHINNEY: Well, I think the labour in trying to produce anything like an agreed text would, as John Meisel said, be quite disproportionate to the results achieved.

MR. STEVENSON: I think this is exactly the reason why the individual papers has come up, knowing the extreme difficulty and probable undesirability of attempting a grand compendium of everyone's views.

DEAN LEDERMAN: One thing I am getting more and more worried about, Mr. Chairman, is the status of the Supreme Court, the attacks that are being made on the Supreme Court; and the Judges are in a position that members of no other governmental body are, they can't answer; so I am determined to use part of



my summer to write something in defence of the Supreme Court; but I don't know how many of the other members of the Committee would find themselves in agreement with me. We found a fair amount of agreement on some Supreme Court issues earlier in our history, in our deliberations. It seems to be taken for granted that the Supreme Court as a tribunal is just going to change. The latest people who take it for granted are the Young Conservatives in their submissions to Mr. Robarts, and this concerns me more than anything. They made a submission to Mr. Robarts in which -- this is one of the points -- in which they accepted the position that comes out of Quebec, the Tremblay Commission thing, without any -- well, as I say, this is one paper that I think perhaps I am going to produce this summer.

DR. FORSEY: I am glad to hear it. I can guarantee I will put my signature at the bottom with yours with a note of concurrence.

PROF. CREIGHTON: Is there a copy of that submission by the Young Conservatives that we can see? They had something more to say. I think they said something about the Senate too.

PROF. McWHINNEY: I think also foreign affairs.

THE CHAIRMAN: Is it agreeable to



13

contemplate that if the Conference were in November, that some time about the middle of October we would be able to put out Volume 4 which might include a dozen essays by those members of the Committee who felt inclined to write one on your views of the problems of Confederation, or do you feel this is an improper question, that the only things you are really interested in tackling are specific issues; someone is interested in the Supreme Court; someone is interested in bilingual districts, and what-have-you?

DEAN LEDERMAN: I think that is the line. We try to sharpen up individual conclusions and individual views, and if two or three or four people are willing to sign something, very well.

PROF. McWHINNEY: Or the other approach, of unifying positions, unifying scattered positions that individuals have taken into a general philosophy, something to unify your ideas on specific problems, something more comprehensive. I think this might well have been the thing that Mr. Pearson complained of. He said that after seeing the work of this Committee he did not think committees were much use, or words to that effect, because they couldn't come out with general advice. I think one of the difficulties in the present debate is that really only



Mr. Daniel Johnson, and Mr. Trudeau now, have come out with a very clear concrete, what I like to call philosophically unified position; and Premier Robarts is undoubtedly trying to reach a balance and it might help him if a few more Scope Essays were written.

All of us are writing in some ways for Confederation. I am sure Eugene is doing about six articles.

For example, Themis did "100 Years of Confederation", and you can't possibly be asked to look at the future, past and present without taking some pretty fundamental positions.

THE CHAIRMAN: I think we have to face it that this Committee has always been and is always going to be misunderstood. If you look at all the criticism in the press about the volumes and listened to the debates in the Legislature, "They haven't said anything, there is nothing eventful, this is all the old stuff", and this is completely apart from the fact that I don't know that the Committee was set up to do that; we were set up to advise on a number of technical questions concerning Confederation. For my part it has been immensely useful in the day-to-day process of advising the Government on Confederation. Perhaps it is something we just have to live with.

Apart from the criticism, however, and looking at the Conference, there is a question



that after two years, perhaps as individuals there is a general set of propositions that we feel inclined to make. In fact, all of you have in some form or another. There are bits and pieces there, articles there, speeches there, statements there, that probably have not been pooled together, for want of a better term, into your coherent philosophy about Confederation.

PROF. CREIGHTON: Mr. Chairman, what you would like then and what you are suggesting is not simply a series of half a dozen essays, such as Bill's, for example on the Supreme Court and mine on the Senate, and others that might come on rather like the ones that have already been published -- in mine I am going to take up a definite position and it would not be a position paper in that sense,.

THE CHAIRMAN: It will be your view.

PROF. CREIGHTON: Yes, indeed. But in addition to that, what you are also suggesting is that there should be, as I understand it, some papers in which a general view of the whole thing, of Confederation as a whole, could be given.

PROF. McWHINNEY: Except that you more than anybody would be competent to write such a paper, you know, because after all your whole life has been related to the development of



the philosophy --

PROF. CREIGHTON: Yes, but it gets to be a book pretty fast.

PROF. McWHINNEY: It is harder to write a 15 page paper, I agree, than a book, as Franklin Roosevelt used to say.

I think the reason Trudeau's has made such a huge impact on the Federal scene is that he has done that; he has got a coherent, well worked out philosophy; he has a position on the Supreme Court and it relates to his general philosophy; and the general philosophy is the result or product of a series of particular positions on particular problems and worked out and integrated over five or ten years. I think that probably is the best, but it is awfully hard to write.

THE CHAIRMAN: Did Professor Conway convey any more to you than he did to me? He said he is going to do a report which is a statement of his own views on Confederation and its problems.

DR. FORSEY: I think I could certainly do, on short order, a scissors and paste job on things I have already written, a statement of my general views. Of course, one of the complaints is that that I saw in a particular paper, I did not say everything about everything. I am prepared to say something about nearly



everything.

PROF. McWHINNEY: I wonder if Ryan will be happy then?

DR. FORSEY: For what it is worth, you are taking up a position.

THE CHAIRMAN: Are you going to say anything new? That is what --

PROF. CREIGHTON: What do they mean when they say "anything new"? Are they not satisfied unless it is a completely new and revolutionary arrangement?

THE CHAIRMAN: I think maybe we are -- when I say "we" I think I refer to the Ontario Government -- perhaps to blame for this in the sense that the Prime Minister set up a Committee and the presumption was that Ontario was now going to produce some kind of new philosophical insight. And then we had two years of silence; and then the interest mounted and the conjecture rose and the questions were raised; and we produced three volumes, which many people have said to me can constitute a text book for a university course on federalism and everything else, but those who live in the world of politics and image-making say ---

DR. FORSEY: "Let us talk about something new". This is the worst kind of juvenile nonsense and it is astonishing the people you get it from. I remember the Committee on



Manpower and Employment was sitting and a gentleman of some education from some centre, fairly youthful, complained that they hadn't been presented with a single new idea on unemployment and what to do with it, and he nearly fell off his perch when I said, "What do you expect? Is anybody likely to produce anything new on a subject like this that has been discussed by so many people for so long? The question is not whether the stuff you got was new but whether it was sensible." That is my question.

Again, I had somebody tell me on a television interview that what I said on the subject of the constitution was like an echo of 30 years ago, and my answer was, "I couldn't care less. I don't care whether it is one thousand years ago or ten thousand years ago, if it doesn't make sense it is equally as bad".

This urge for getting something new is the worst kind of rubbish.

PROF. MEISEL: Mr. Chairman, I think that what happened as a result of our breaking into print as we did, what is happening, I think we are shifting the ground on which we are operating, and we are setting up a new purpose for this Committee, and perhaps we should. But when I first joined this Committee I was given to understand that the idea was that the Government of Ontario, notably the Prime



Minister, had to take positions from time to time on the role that Ontario would, must and should play in Confederation and that he would like to get ---

THE CHAIRMAN: Position papers.

14 PROF. MEISEL: -- the advice of a group of people who had some particular and general interest and competence in this area, and all he wanted was to get advice and insights and views which he would then use the way he saw fit. Now I am being asked to start writing articles and books to be put out in the literature of this Committee. If I want to sell articles and books I can do it anyway. Why should I do it in this Committee? I can do it in my own way which I have to do anyway. I think there is a very subtle change indeed.

If you proceed that way, as the full time officials here would like - "We have been so impressed by all the brilliant insights that you seventeen chaps have been telling yourselves for the last two years but we would like to have a more coherent statement for our own use, for ourselves to start writing for posterity, or members of the Opposition in the Legislature, or those people who criticize us --" I do not think that is our job. I think if there is a political problem of to some extent creating a better image for this Committee, it



may be useful in the long run.

Then I think there are other possibilities. I was thinking for instance this morning when you were talking about what had been said in the Legislature that maybe this would be the time for the Prime Minister to ask Mr. MacDonald and Mr. Nixon, either themselves or through some of their representatives, to become associated with this Committee. There is no reason why some device couldn't be found for bringing some of these chaps into a much closer contact with what we are doing.

You know, we are representing only our own views. We could broaden the base of those views. There is possibly some opportunity for a non-partisan, courtesy committee -- what-have-you -- like that, that is just developing in Quebec.

PROF. BRADY: Advising the Premier of the Province?

PROF. MEISEL: I think it could even be put in those terms, but the role of Ontario in Confederation in some of its aspects needn't necessarily be a matter can't very freely consult members of all other parties.

MR. STEVENSON: I was a little disturbed to hear you mention that individual essays would be contributions to Volume 4. Certainly my own thought about what people might be doing



this summer was that it would not necessarily be for publication at all. In fact, I hadn't thought of publication. I was thinking, hoping, that this one would get individual views of the members of the Committee on most of the really difficult problems that are going to come up for Mr. Roberts when he is thinking of a position for himself at the Confederation of Tomorrow Conference and subsequent debates.

It might be that some people might like to see them published later, and perhaps some could go into the volume, but I do not see why this should be part of it. Certainly, as Professor Meisel says, this detracts from the advisory purpose. I don't see how it has to be made a condition of writing a paper.

THE CHAIRMAN: That is why I said for either governmental or public consumption, whichever the Committee felt inclined to follow.

There is no doubt that the primary purpose both of the Committee and this exercise would be governmental advice. If, as in the case of the background papers, one felt that it was useful and not harmful to make them public, I think that is a separate point.

I think we are technically, of course, concentrating on, as I said, equipping the Government to go in on the Confederation of Tomorrow Conference as well prepared as possible;



and, indeed, if our function for two years has been to be an Advisory Committee to the Government, this conference really does bring to a head the most useful role of this Committee.

I remember when we first talked about the Conference the Prime Minister said several times that in approaching it he would see the greatest use of the Committee coming at that time, when he could be equipped with advice on the range of possible positions that were open on Confederation, the range of possible positions that he might take up.

MR. PERRY: Wouldn't this be a matter of handing out some specific assignments after or in the process of establishing the agenda for the Conference?

~~THE~~ CHAIRMAN: Well, perhaps, yes. I think that is right. I am thinking of the time element.

MR. PERRY: Rather than leaving it to an inspired effort on the part of members.

THE CHAIRMAN: Yes, that is true. I think, however, probably the time, the summer months, would be the time that many people here would have their best opportunity, so we want to do this fairly quickly.

Perhaps the best approach is for us in the staff here to try and design the type of questions that we would like people to help



us answer and see who is willing to take this up.

DEAN LEDERMAN: We can make this question an article of business on the 16th of June.

THE CHAIRMAN: Our staff should come prepared at this time I think with some suggestions.

MR. STEVENSON: It would be interesting, Mr. Chairman, at this stage, to get any reaction to those questions that were attached to the letter that you sent out to all members.

Is there any feeling that they represented the kind of questions that were appropriate?

PROF. CREIGHTON: This is what you hoped to get, Mr. Chairman, out of today's discussion and which, in fact, we haven't really touched? Right?

THE CHAIRMAN: Right.

PROF. CREIGHTON: Well then, why not take that up the next time and devote our session to that entirely?

THE CHAIRMAN: Well, we have these, and Professor Meisel added a couple of others and, indeed, there may be others that we should add.

MR. PERRY: I thought what was there was a very good beginning and that we might add one or two.

MR. MAGONE: I was under the impression that the report of the constitutional committee in relation to the Supreme Court of Canada had

of the meeting to the fact that

THE CHAIRMAN: Right.

Now, of the

on the other hand, I think

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been adopted by the Committee.

PROF. CREIGHTON: Yes, it has.

MR. MAGONE: And if that is so,  
I don't know why it can't be published now.

PROF. McWHINNEY: We are, Bill, going  
to write some reasons.

DEAN LEDERMAN: That could be written up.

MR. MAGONE: I understood you did say  
at one time --

THE CHAIRMAN: You did do that, Bill,  
didn't you?.

PROF. McWHINNEY: The reason it wasn't  
published was that I think the papers would  
represent the private view of the authors but,  
of course, the consensus - didn't we have a  
long debate in this room about a year ago,  
the consensus point would not be released except  
to the Premier because that was confidential  
advice maybe that could be changed?

MR. MAGONE: We could leave that,  
whether it should be published or not.

THE CHAIRMAN: We will have to look  
at the proceedings. I recall we arrived at  
a decision on the Supreme Court which consisted  
of a very few lines. I then said, "Now, if I  
go and hand this to the Premier cold, there  
will need to be some explanation as to how it  
was arrived at and what the issues were," and  
we asked Bill to provide that for us.



DEAN LEDERMAN: I am not sure I ever did.

PROF. McWHINNEY: I think you did. A year ago last Spring we considered three or four different reports, I thought, and we both arrived at agreement as to how we were to handle these consensus papers and, I think, decided at that time they should be confidential. I think also they were each written up by a reporter and you each produced about three papers.

THE CHAIRMAN: And I passed that to the Prime Minister, of course. But then we had a discussion about it and there were one or two new problems arose again in that discussion that we did not agree on and from that point we went back and puzzled out some assignments which led to your subsequent work on constitutional matters, Bill.

DEAN LEDERMAN: We then put together quite a long list of things.

THE CHAIRMAN: That led to your work and Ted's work and Eugene's work.

DEAN LEDERMAN: Well, perhaps the staff could look in the files and see what is actually there. If there is more required we can look at that next month too.

PROF. MEISEL: Mr. Chairman, I think it would be exceedingly dangerous if we started publishing the things upon which we agreed.

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... .. I think, decided at

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PROF. ... ..

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This could, for instance, lead to a development where the Prime Minister decides to ignore our views, which he no doubt will do more than once, and we are on record as having recommended something and he will then be asked, "Why don't you take the advice of your own Advisory Committee?", and I think this will weaken his hand.

THE CHAIRMAN: We did agree on that.

PROF. CREIGHTON: There is already this agreement on record, because the economic and fiscal committee recommended a certain limitation with respect to income tax and the Prime Minister subsequently advanced a position which differed from it.

DEAN LEDERMAN : When one does publish material there is safety from the variety of views for the Prime Minister; he can point to the variety that is in the material ---

THE CHAIRMAN: I think we might make these questions and those that were added the beginning of the process and devote our next meeting to it, although Eugene was critical of the set of questions as such; he suggested that they were of a certain kind.

PROF. CREIGHTON: Well, they assume a certain direction of thought, with which all people don't necessarily agree. "If changes are to be made, does one envisage only the possibility ..... " and so on. " .... would one accept affectuation of the principle of decentralisation ..... "; in other words, yes.

PROF. McWHINNEY: Couldn't you answer that by saying No?

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of thought, with which all people don't necessarily  
agree. "If changes are to be made, does one envisage

PROF. CREIGHTON: Then the other questions go along as if they assume that the answer has been Yes.

PROF. McWHINNEY: The constitutional debate participants will be cut off by Question One. That is the difficulty of debate; at no time has there really been a specific coherent overall statement. There is nobody to balance Daniel Johnson by stating this position, and a lot of these people would be answered by One. Questions two, three and four are only relevant if you answer Yes, we do envisage change. It is an awfully difficult debate, and one has to take a position ---

DR. FORSEY: Mr Chairmn, you will be coming back to the meeting I take it on the 16th with the report of the research committee for the Confederation of Tomorrow Conference and that presumably will involve, it will be implicit in the recommendations that there will be a series of specific or general position papers or reports .... so that will be the second part of our agenda for the next meeting?

THE CHAIRMAN: I am sorry ... you mean .... ?

DR. FORSEY: For the 16th of June ---

THE CHAIRMAN : In Kingston?

DR. FORSEY: No, June the 16th. Aren't we meeting here?

THE CHAIRMAN: Yes; but you said a report will be coming to that meeting ---

DR. FORSEY: Not for the Confederation of Tomorrow meeting?

THE CHAIRMAN: No. It is Five to Five ....

--- The meeting concluded at 4:55 p.m.



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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

MEETING



held at

The Frost Building, Queen's Park, TORONTO

on

FRIDAY, JUNE 16, 1967

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VERBATIM REPORT OF PROCEEDINGS



ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

The Frost Building, Queen's Park, TORONTO

on

FRIDAY, JUNE 16, 1967



VERBATIM REPORT OF PROCEEDINGS



ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held at the Board Room, 6th floor,  
Frost Building, Toronto, on  
Friday, June 16, 1967.

PRESENT:

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Prof. D. Creighton

Dean R.M. Dillon

Prof. P.W. Fox

Mr. G.E. Gathercole

Dean W.R. Lederman

Mr. C.R. Magone, Q.C.

Prof. E. McWhinney

Prof. J. Meisel

Mr. J.H. Perry

Prof. T.H.B. Symons

Mr. D. Stevenson	)	
	)	Co-Secretaries
Mr. R. Farrell	)	

Mr. C. Beer	)	
	)	
Mr. G. Posen	)	
	)	Secretariat
Miss B. Campbell	)	
	)	
Mr. M. Rand	)	



FRIDAY, JUNE 17, 1967

-----At 9.45 a.m.

THE CHAIRMAN: Those who will not be with us to-day as far as I am informed, are Dr. Forsey and Professor McIvor.

I think Mr. Stevenson would like to introduce two temporary members of the Federal-Provincial Secretariat.

MR. STEVENSON: Yes, we asked Miss Bonny Campbell and Mr. Michael Rand, who are here and here, to sit in with us to-day. They have both been with the secretariat for the last couple of weeks and will be with us during the course of the summer.

Bonny has been taking over a good bit of the translation work. She was educated in France at the outset of her career. She is doing the translations from the Quebec press. They had their trial by fire in this week, translating Mr. McNaughton's statement to the Tax Structure Committee on Monday and Tuesday, which was indeed a real trial by fire when you consider some of the technical terms that went into it.

THE CHAIRMAN: That preceded ---

PROF. FOX: The real trial. Sufficiently trying in English.

THE CHAIRMAN: I was going to say, the fire by trial.



PROF. MEISEL: What language is it being translated into?

MR. STEVENSON: From one jargon to another.

Michael Rand, his first little task is just pulling together a lot of Advisory Committee material. He is starting out in a school of law here, after having completed quite a considerable project a year ago on inter-state and inter-provincial agreements. So if anyone wants to know anything about inter-state compacts and their possible relevance to the Canadian situation, then he is the person to whom to look for background, I think.

THE CHAIRMAN: Thank you, Don.

One or two matters of interest to report. I am fresh from four days in the federal-provincial coliseum again, and we had various meetings - Tax Structure Committee, Committee on Financial Institutions; and the upshot is that some integrated studies will be taking place during the summer among provincial officials and federal officials, with a view to trying to develop some common denominator in their approach to the implications of the Carter Report.

Secondly, we have circulated this morning a paper by Mr. A.W. Johnson, the Assistant Deputy Minister of Finance, which I think members will find interesting to read before our meeting



with federal officials next week. This paper was presented to the Canadian Political Science Association last week, as some of you know, and I think it represents quite a comprehensive analysis of basic alternatives before Canadian federalism to-day, and, by implication, I think, some views of Mr. Johnson on that range of options.

I think it also provides a useful way of tackling the kind of alternatives that are before us, and that might eventually come but, for example, in the Confederation of To-morrow Conference.

PROF. CREIGHTON: Mr. Chairman, there was another session of the Political Science Association meetings which I tried very earnestly to attend and which I failed to do as the result of the enormous crowd which packed and overflowed the room, and that was the session on the political status of Quebec, these addresses by Eugene Forsey and Jacques-Yvan Morin. I wondered if they could be available to the Advisory Committee.

THE CHAIRMAN: Well, we could certainly get those papers.

PROF. FOX: I suggest that we try to get Dr. Forsey's, but that Mr. Morin's was not terribly useful. It was a long, historical account of particular studies.

PROF. CREIGHTON: I would think it would be a very useful indication of the real



nature and quality of Mr. Morin's mind.

THE CHAIRMAN: We can certainly make efforts to secure both papers. Eugene's paper was quite similar to the one published for us in our proceedings, but was different in some respects also. We can try to get those.

MR. STEVENSON: Yes, we will try to get them. Gary was not able to get them when he was at the session itself.

THE CHAIRMAN: Then the final thing, the paper being prepared for us on "Notes and Comments concerning a Bill of Rights for Canada" by Dean Lederman, was received yesterday and is in the course of being reproduced this morning, which we hope to have in your hands by noon.

I am waiting to hear from Mr. Robarts. He may wish to drop over briefly at some point during the day for a general chat about his thinking on this subject and some discussion with you.

I realize, of course, that members won't have had a chance to read it at that point, but it will be a preliminary run-through, and in any event he can have a discussion with Dean Lederman on it if he is able to come.

I might say that on the front of general progress, the meeting in Ottawa on July 5th will be a very brief meeting and not in the nature of a formal federal-provincial conference by any means.



From the agenda it now appears that the time allocated to this question will be between the hours of two in the afternoon and three-fifteen, and inasmuch as the formal lunch is scheduled between one and two I should think this might well intrude itself on the hour and a quarter that is set aside for this particular subject.

I think all that is going to be suggested from this quarter at least, is that general interest be expressed in the matter and that it be scheduled for a federal-provincial conference at some early date.

The second thing is that Mr. Robarts will discuss with others the Confederation of To-morrow Conference. There has been further discussion and correspondence with the Prime Minister of Canada. I think it is now generally understood and agreed that Mr. Pearson won't attend, but there is every good prospect he will send observers, and we hope that these observers will be at the Cabinet level.

PROF. MEISEL: This means the federal government is not going to participate in fact?

THE CHAIRMAN: I think that is right, yes.

PROF. McWHINNEY: I hope the same philosophy does not apply to the Kingston meeting. Otherwise it will be either a monologue or a deafening silence.



THE CHAIRMAN: Of course, if we are all present, it won't be a monologue.

PROF. MEISEL: Who knows?

PROF. McWHINNEY: One of the federal people told me he was going to listen but not say anything. But suppose Donald and I decide not to say anything?

PROF. CREIGHTON: I am not going to be able to say anything anyway: I am not going, because I cannot go. I informed the secretariat early of this, but they found I was quite easily dispensable in my arrangements.

PROF. McWHINNEY: You will be heard in the distance though, Donald.

THE CHAIRMAN: Would you like to make a recorded message to send?

PROF. McWHINNEY: You will be the "brooding omnipresence in the sky" nevertheless.

PROF. FOX: Mr. Chairman, on the point of papers at C.P.S.A., Dr. Brady and Professor Adamson of Arcadia gave two papers. I wonder if we should mention that. I know Professor Brady is probably doing this in another form here. Adamson's paper was sort of background of the Fulton-Favreau formula. I was not terribly impressed with it, but perhaps it might be useful - his attempt to explain the personalities or the result of the collision of personalities and interlocking personalities.



Professor Brady was there. Maybe he would like to express an opinion whether it would be useful to the Committee.

PROF. BRADY: I think it would be so, yes; might be useful.

THE CHAIRMAN: Sounds more like psycho-analysis than political science from what you say.

PROF. FOX: There isn't much difference in some parts.

DEAN LEDERMAN: I think this grows out of his M.A. thesis for John's department, and we already have that. I suspect this is a re-written portion of his thesis.

PROF. FOX: I didn't know that. Fairly long nevertheless.

DEAN LEDERMAN: The thesis is a very thick thing, so to have his own summary of it might be a useful thing, but we do have in the hands of the secretariat the basic material. They did not reproduce and circulate it wholesale, but I think you have copies of it.

THE CHAIRMAN: Are there any other preliminary observations or questions?

I understand, Charles that you want to report on other matters relating to the Kingston meeting.

MR. BEER: Yes, Mr. Chairman. There has been one change with respect to the agenda, and that is that Mr. Bryce rather than Mr. Johnson will be giving the introduction to the



economic section. This was at Mr. Johnson's insistence. He felt that Mr. Bryce is head more or less of the delegation from Ottawa, and it would be better if he spoke. I believe that Mr. Burns has now worked that problem out.

With respect to the arrangements, the format is almost the same as the last meeting we had in Kingston with the Quebec Civil Servants. We shall be meeting Friday evening. There is a letter going out, I believe, to-day from Mr. Burns to everyone with the final arrangements, but I can review them briefly here.

The residence accommodation is at the graduate residence in the Union, and most of the social activity will take place there. There will be a lounge in the Union on the Friday evening, where we will meet as we did the previous time with the members of the federal and also the Ontario Civil Service, for discussion.

Then the next day we shall start with the constitutional and cultural part of the program in the morning. I believe it is going to be nine or nine-thirty. It has not been definitely set; it may depend on the Friday evening. These meetings will be held at Dunning Hall in the conference room, the same room we were in before.

There will be a breakfast served in the residence where you will be staying, and we will



be having a lunch Saturday and the banquet Saturday evening in the same room where we ate the previous time.

There will be a reception before the dinner in the lounge of the Union, and I think that is pretty well all. There will be a meeting Sunday morning which will end in time for people to get the same trains which they took the last time, although those times have been changed, but it will probably go from nine to eleven-thirty Sunday morning.

There will be a letter going out to-day with all this information, so you should get it Monday or Tuesday.

THE CHAIRMAN: There is a fairly complete response from the federal officials.

MR. BEER: Yes, there has been quite a good response from the federal officials.

Mr. Burns asked me to say that if anyone hadn't written to him as yet from the Committee at the beginning of the week (and there were still a few who hadn't) he would like to be sure in terms of the number of rooms he should reserve. Perhaps I could just ask if everyone here has informed him one way or the other. Some people I have told them about so that he knows.

PROF. McWHINNEY: You got my double notification earlier?



MR. BEER: Yes. There will be -- and this comes from last meeting -- representatives from the justice-constitutional side. This was done after the last meeting.

I think that is everything, unless Dean Lederman or Professor Meisel has anything.

DEAN LEDERMAN: And Mr. Goldenberg.

MR. BEER: And Mr. Goldenberg is coming.

PROF. McWHINNEY: Mr. Goldenberg told me privately in Ottawa that he was very concerned. We had a long chat, and he felt the *raison d'être* of his appointment was that he was close to Premier Robarts and other provincial premiers, and he said -----

-----Off-the-record discussion.

MR. STEVENSON: Charles, could you mention the names of the additional federal people?

MR. BEER: The federal people as of the last conversation I had, are the following:

Mr. Robertson, Clerk of the Privy Council;

Mr. Bryce, Deputy Minister of Finance;

Dr. Deutsch, Chairman of the Economic Council;

Dr. George Davidson, Secretary of the Treasury Board;

Mr. Ernest Côté, Deputy Minister of Northern Affairs;

Dr. Claude Isbister, Deputy Minister



of Energy, Mines and Resources;

Dr. J.N. Crawford, Deputy Minister of  
National Health;

Mr. Tom Kent, Deputy Minister of Man-  
power and Immigration;

Mr. Walter Duffitt, Dominion Statistician;

Mr. T.K. Shoyama, Economic Council of  
Canada;

Mr. E.M. Gallant, Director of Federal-  
Provincial Relations Division;

Dr. A.W. Johnson, Assistant Deputy  
Minister of Finance;

Mr. Jean Beetz, Privy Council Office;

Mr. G.G.E. Steele, Under-Secretary of  
State.

PROF. MEISEL: No, he is not coming.

MR. BEER: He is not coming, right.

Mr. Carl Goldenberg;

Marc Lalond is now coming, and Michael Pitfield  
coming; and there is somebody coming from the  
Department - another person from the Department  
of Justice.

THE CHAIRMAN: Thorson?

MR. BEER: He was supposed to be coming  
and then it turned out that he could not, so  
Mr. Burns asked him if he could send someone of  
high rank, and he said definitely he would, but  
the name Mr. Burns did not know when I was  
talking to him.



PROF. McWHINNEY: Nobody from External Affairs?

MR. BEER: Mr. Gotlieb at the last time earlier this week, when I was talking to Mr. Burns, was possible; He was still not definitely coming.

PROF. McWHINNEY: Carl Beetz and Lalond will be there.

MR. BEER: Evidently Pitfield also works with Beetz in the Privy Council Office.

THE CHAIRMAN: Did you say Beetz would be there?

MR. BEER: Yes, according to the ---

PROF. FOX: Very strong delegation.

PROF. McWHINNEY: They have strengthened it significantly, I suspect as the result of your intervention.

THE CHAIRMAN: Among our civil servants have you a run-down so far?

MR. BEER: Yes, from the Ontario Civil Service:-

Mr. R.M. Warren, Executive Director of Manpower Services. He is replacing Mr. Eberlee, the Deputy Minister who is unable to come.

Mr. S.W. Clarkson, Deputy Minister of Department of Economic Development.

Unfortunately, Mr. Dick, the Deputy Attorney-General, is not able to come; nor is Dr. Charron, the Deputy Minister in the



Department of Health.

But Mr. F.W. Callaghan, who is Senior Crown Counsel, will be there from the Department of the Attorney-General.

Professor Rathé is unable to come.

Dr. J.K. Reynolds, Chief Executive Officer to the Prime Minister, is coming.

Dr. McCarthy, at the moment Mr. Burns hadn't heard definitely whether he will be coming. He is the Deputy Minister of Education. We certainly hope he will be able to.

Mr. W.H. Palmer, Deputy Minister of Municipal Affairs, is coming; and Mr. E.M. Biggs, Deputy Minister of Agriculture, has also been invited but as yet we are not sure whether he will be able to come.

I think that is everything there -- plus, of course, the Advisory Committee.

PROF. MEISEL: The Ontario delegation official side is considerably weaker than the federal one.

THE CHAIRMAN: In numbers, yes,

MR. MAGONE: Hear, hear!

PROF. MEISEL: They are pretty well the first top people, it seems, from what Charles has just said. Senior people may not be better than junior ones, but in terms of rank there is a clear difference.



MR. STEVENSON: So from this list that Charles has just read, only Messrs. Warren and Callaghan are less than deputy rank.

PROF. McWHINNEY: You have this difference in the functional emphasis, such as we had in the case of Quebec, but my friend who was thinking of coming to the meeting from Ottawa, when he said that he was going to listen, more or less gave me the impression that he viewed it as a seminar. "I suppose the professors coming from Ontario will have their usual field day". One need not be worried, therefore, that we would be under-represented from the viewpoint of eloquence. It is perhaps the weight.

PROF. CREIGHTON: Not after hearing you the other evening at that interview of yours.

PROF. McWHINNEY: Which one, on Israel?

PROF. CREIGHTON: You hardly allowed your questioner to start the ball rolling.

PROF. McWHINNEY: That is the gentle art of interviewship: never let the interviewer get away with it.

THE CHAIRMAN: Avoids questions you don't want to answer.

We thought to-day that the best use of our time would be to simply work through the agenda, with the double purpose in mind that it would be useful to have had a chance to talk



out in advance of the Kingston meeting those matters which we wish to deal with there; but at the same time all of these questions and all of these items in my view are matters which come together as the questions which should be put and which should be answered in terms of evolving the Ontario position, such as it may be, in the next few months and in advance of the Confederation of To-morrow Conference.

Although the purpose of that conference, as you know, is not to come to it with firm and set or irrevocable positions, on the other hand I have expressed my own view more than once that we should be building up a basic philosophy, basic position at least, in this province on the whole question.

The research policy sub-committee met to work over rather carefully this agenda and to develop it. We deviated from the original form by putting constitutional and cultural together, because in essence we wanted to concentrate on those questions of the structure of federalism.

Secondly, we felt that the economic questions, particularly by this group that are meeting in Kingston, have been confronted and are being confronted with some frequency, and that they might well assume as a result of that



not an unimportant role for this purpose. We wanted to give the balance of time to Section A.

Now, immediately looking at the first question (and this is going to be a problem in this kind of exercise always) it plunges us right into the large issue at once:-

"How far, if at all, is considerable  
"change at present necessary in the  
"constitution?"

MR. PERRY: Mr. Chairman, is a question of this generality intended to open up the first two areas which the Premier himself listed as being those which he thought should be discussed at the Confederation Conference?

They are, first of all, to what extent to we believe our present federal system is not working properly? Two, what are the broad objectives we think our federation should be striving to achieve? In other words, these are very broad areas. Three and four get down into specifics which seem to have their counterpart in this list.

What I am really asking: are we taking on (1) and (2) seriously somewhere in this, or are we ducking them?

I see some of the questions can lead to discussion of that breadth, but is this the intention?



THE CHAIRMAN: Well, let me put it this way. I think the sets of questions we have here on the four points that the Prime Minister put in his speech on confederation in the debate in the Legislature, are related, not mutually exclusive, but not the same thing neither. That is to say, these are pretty broad, general questions, really as a diagnosis of the sort of things we think should be considered; and perhaps these questions before us for Kingston are more details which form a content of those broad questions.

MR. PERRY: Actually (3) and (4) are fairly specific:

"What should be the structure of federal-

"provincial relations?

"What should be the relative use of the

"English and French languages?"

These appear very specifically in our list of questions for the meeting next week.

PROF. FOX: I think the feeling, Mr. Chairman, at the policy committee where we discussed this, was that if we began with some of the more specific issues we would very shortly get to the overall position of the individual and his view of federalism; and, therefore, we might as well begin with the general and have some preliminary discussion at least on the broader issues before we went to the specific ones. But I don't suppose that order has to be preserved.



MR. PERRY: No, I think you probably will have that result with question (a) under "Constitutional and Cultural".

PROF. FOX: (a) and (b), I think, are the two general ones.

DEAN LEDERMAN: The thing I would like to see under (a) is what you might call the philosophy of change in relation to the constitution. How does one approach it procedurally?

I think I am being typically Anglo-Saxon when I say that I think the approach to change is specifically in step-by-step. This is the thing, I think, that is characteristic of English Canada and the English constitutional inheritance: we are prepared to consider change, but let them be specific about it; let those who propose change (whoever they are) be specific about what they are proposing. Then you consider that and go on to something else, and after five years of this, or seven or ten years, you may look back and say: "My goodness, we have changed a great deal in this way".

But I do not feel myself certainly that I could sit here at this moment and say: "I can foresee that considerable change is necessary"; nor could I sit here and say that I can foresee that considerable change is not necessary.

I think what this calls for is the discussion of the philosophy of change. The one



great confrontation conference on the one hand, or the step-by-step procedure on the other.

PROF. MEISEL: I think there are some nuisances here. I will proceed here in a typically un-Anglo-Saxon manner, and the question that occurred to me in looking at it (it is interesting that you should have got it in this different way): first, would it be worthwhile at this stage to enter a discussion of what kind of country we think is developing here, in the sense that the constitution after all must serve certain general purposes which reflect the intention that people have about the kind of political community in which they live? In an academic seminar this is very easy to do. Whether you build constitutions this way, as the Anglo-Saxon influence, I am not sure. Perhaps you had better tackle these problems one by one; but at this conference, to the extent it is going to be in part at least a seminar type of experience, would it be wise to discuss whether we think, you know, Canada is a pluralistic community in which a variety of groups and regions compete with one another for influence, or whether it is a partnership between English-speaking and French-speaking people; whether it is really the outgrowth of the British colony and dominion which is perpetuating to some extent



certain British values in conjunction with other elements?

These are the kind of questions that at some stage I think you have to tackle before you can decide what kind of constitution you want.

PROF. McWHINNEY: Bill's interpretation of (a) is really the methodology of change. Yours is an even more prior question, if one can use that term - what different policy alternatives?

I suppose if one treated it on your approach, one would essentially treat this as an opening question, not necessarily to be answered at the beginning but to be taken as a *réprise* at the end.

PROF. MEISEL: It doesn't answer Bills' question either, because no matter what conclusion you may reach you are still faced with Bill's question.

PROF. McWHINNEY: That would be the next question.

DEAN LEDERMAN: I don't think/you and I are saying is inconsistent. I am talking methodology, and it is always secondary to objectives.

PROF. McWHINNEY: Although sometimes it shapes the objectives.

PROF. MEISEL: If you get so vague in



talking about objectives that you end up  
 waffling, you may be better off tackling it by  
 considering specific -----

DEAN LEDERMAN: I think it perfectly  
 proper and right to try to discuss general  
 objectives, but when you try to say: "If you  
 take, for instance, the position that way and  
 think in terms of the Canadian citizens as much  
 more citizens of the world and not nearly so much  
 characterized as British or French", that these  
 are sort of broad, general objectives. This is,  
 I think, the burden of that book of Peter  
 Russell's collection of essays on nationalism,  
 that one moves in that direction.

Now, that is fine, I think this thesis  
 attracts me, but what are its implications for  
 91 and 92 of the B.N.A. Act, and how fast do  
 you change the distribution of power to move in  
 this direction, or do you have to change it at all?  
 Then you are clearly into the method and how  
 fast you move.

PROF. McWHINNEY: You could cover that  
 in a way too under (b). I think John is right  
 in suggesting the prior constitutional question  
 is needed for discussion at this stage.

I think the thing that struck me after  
 my visit to Ottawa last week, I had a long,  
 long conversation with Trudeau (and Trudeau is



an extremely interesting man from the viewpoint of intellectual ideas): he has had a philosophy of federalism that goes back to his period as a sort of casual professor -- and you can only call it that because he was about two months at the University of Montreal and the rest of the time he was beyond the Black Sea or somewhere; but he has a philosophy on federalism that I don't think the Prime Minister is aware of or the rest of the Cabinet. The rest of the Cabinet seem to be drifting along in the particular constitutional status idea and with various modifications, but his philosophy is fundamentally different and it would be very helpful to the federal bureaucrats, I think, to have some thinking on their own part as to what the policy options are and which one at the moment has the federal government's support or is one which the federal government, in the stage they are moving very often, finally had to enter. Because ten equal provinces and a vastly decentralized federal system have astonishing implications in the economic and tax field which would probably prompt Mitchell Sharp's resignation if they are ever carried through. Even more on the federal level is the discussion of general questions needed.

THE CHAIRMAN: I am extremely interested in what you have just said, because I detected the same dilemma. In fact I asked the question,



not very subtly probably because I did not want to be in the position of confronting a federal minister's position; I did ask in the context of commenting on Al Johnson's paper last week, and I wonder -----

PROF. CREIGHTON: Asked what question?

THE CHAIRMAN: This question. I wonder if the implications of the present federal philosophy, which I gather is very much Trudeau's philosophy, have really been grasped; and, as I understand it, by his taking the view, this new view, that there must be a very explicit distinction between federal and provincial responsibilities and that all the provinces must stand equally on the same line vis-a-vis the federal government; but, given the fact that political circumstance and pressure from Quebec has been moving in the direction of decentralization as far as Quebec is concerned, it follows, therefore, that if this is to continue to be the case progressive decentralization must take place in all other provinces as well.

With this assumption that the whole point of the thing is to step up decentralization and then we draw an explicit distinction and we are not going to let any further pushing up by the provinces beyond what we now have: if one presumes that the force of present circumstances,



not only in Quebec but elsewhere, will cause a continuing form of decentralization, then, as you say, it follows in turn that you must face the question of a specific redistribution of financial resources to accommodate that - which comes immediately in conflict with Mr. Sharp's position.

Now, this is a very interesting question, I think, and first of all it raised the following sub-question. Has all of this been fully explored by the federal Cabinet? Secondly, is there a Cabinet position or is this a Trudeau position? Thirdly, is it even a Trudeau position or is it something that has evolved by a form of consensus? Very difficult to know this without being in the federal Cabinet.

PROF. McWHINNEY: He says education, health and social services are provincial, and he said this even as a professor. His present position seems to be the federal government should get out of these areas.

You can imagine the dramatic effect on fiscal policies of the distribution of revenue between federal and provincial government.

There is no question of his influence on the Prime Minister. I am sure the Cabinet has not faced the implications of these proposals.

THE CHAIRMAN: Yet, at the same time, Ted, Marchand in particular has said that there



is a place for the federal government in what by one interpretation could be regarded as the fields of culture and education, and this through the medium of television, manpower training and a variety of other devices which can all be distinguished in another sense as economic policy measures or broad national cultural requirements.

PROF. MEISEL: It seems to me that this is a classic example of what political science is really looking at all the time now in parliamentary systems. You have a cabinet that is confronted by a very tricky situation and it doesn't quite know what to do, so it responds to challenges on an ad hoc basis. At some stage it appoints a man who is a very strong person in this area (Trudeau) and he does begin to formulate policies which are being implemented but which have not been fully digested by the cabinet and perhaps by the Prime Minister.

But the next step is really, I think, the interesting one. This man, knowing that to some extent he is working out of ignorance, appoints a special group to provide papers which define what has heretofore been an ad hoc series of positions, not a coherent sort of statement.

I think when Carl Goldenberg and his team provide the papers, the Cabinet will be



compelled to take a Cabinet position on those papers, so we are at the very moment seeing the thing congeal a little bit. I think this is rather good, because we have probably some opportunity to take part in the process of definition.

THE CHAIRMAN: This is why this meeting at Kingston is very important in this exercise.

PROF. BRADY: I have one difference from your view, that I don't think that is new.

PROF. FOX: It sounds rather familiar actually.

PROF. CREIGHTON: Mr. Chairman, if all this is true, and at any rate there seems to be a good deal of evidence that this is the way things are moving at the moment: surely the general objectives which John has just set out are really rather irrelevant to the present issue.

I mean, it is not a question as to whether we are going to prefer a unitary society or whether we are going to have a bi-national society: it is a question of whether we are going to have a nation which is in fact a collection of very powerful provinces, or a nation which has significant central government. Then we are back to the very beginnings of Canadian confederation.

THE CHAIRMAN: It is interesting you



put it this way, Professor Creighton, because there is clearly some very deep anxiety among senior officials in Ottawa that I notice about this. This week at our meetings for the first time, both in the open discussions and in the discussions over coffee between the formal sessions, for the first time at least in my recollection I heard federal officials challenge positions which were taken by saying: "If we do that, we are going to end up as a confederal state". This is the first time I have heard this term used. This is the first time this has come out in that explicit way.

PROF. McWHINNEY: Used to you in your capacity as provincial -----

THE CHAIRMAN: These were suggestions that came up by various people from time to time.

PROF. McWHINNEY: In the ordinary scientific meeting?

THE CHAIRMAN: No, if we might say this week of the Tax Structure Committee, more particularly in the last two days.

MR. PERRY: These are realists, not academic politicians.

THE CHAIRMAN: More particularly in the last two days. Let me give you an example here.

A certain position was put forward that the federal government should really get out of



the incorporation of companies altogether, you see; that it would be simpler if you just had provinces incorporating their own companies, and then you would not have these problems of divided jurisdiction.

PROF. CREIGHTON: Why not take over banking too and then you wouldn't have problems at all.

THE CHAIRMAN: This is the federal position: does this end up with a confederal state?

PROF. CREIGHTON: So it does too. That is what we ought to be talking about.

MR. PERRY: I think everything that is mentioned so far seems to be matter of structure and methodology. Surely there must be some underlying objective we seek to achieve as the Canadian nation. First of all, what are these objectives and what are the things that contribute to their realization, and how dedicated are we towards doing the necessary things?

PROF. CREIGHTON: What possible relation has a bicultural or pluralistic nation to a strongly united or fragmentally divided state? No connection at all.

PROF. MEISEL: It seems to me the problem is to reconcile the positions that the different actors in this game adopt. We may not like what the Quebec actors adopt, but there



it is. This is one of the counters in the game that the federal and the other provincial spokesmen have to take into account. We may prefer a unitary state or federal state of the 1867 period, but it may no longer be workable given the positions that some of the provinces adopt.

I think the alternatives are not quite as simple as either having a very loose confederal structure or a fairly highly centralized one. We may have to stake out a formula which will permit those provinces which want to have a fairly strong federal leadership to develop this, and yet permit one of the provinces that does not want it to have some other arrangement. Now, this is nothing new.

THE CHAIRMAN: But this still takes us back to what is obviously the fundamental question, which seems to me to have been before us from the beginning now; and that is the likelihood that most other provinces - not necessarily all but most other provinces - in many instances will opt one way and Quebec will opt the other, and if it happens often enough you willy-nilly end up with some kind of special status without having explicitly or deliberately gone at it.

For example, I did mention that the federal people, as I have detected loosely in the last two days in this discussion of the financial institutions, were really appearing a little



besieged about this whole business of confederal state. I know the discussion came up about their role in securities administration - which, as you know, has always been done provincially. There was a great deal of discussion about whether they had any role at all either constitutionally or functionally, and Quebec in particular was taking a very strong line that there was neither the right nor need for the federal government to be in this position.

I was quite amused when I made an intervention, that it seemed to me that there was rather more at stake here than just the administration of certain laws and procedures, but whether you had a national capital market or not. I was almost embraced by the federal officials for having made this rather commonplace point.

MR. PERRY: God bless you! .

THE CHAIRMAN: From the point of view of the province. What was really shaping up was that you got a situation where -- and I think most of the provinces would be prepared in some form or another to see the federal government play a pretty prominent part in this game, even to have a federal securities commission which in the long run might become in fact the sole securities commission - it might become a national matter as it is in the U.S.



What would happen then? Would this mean a national securities commission applying to nine provinces, and then a Quebec securities commission? If so, you by definition would not have achieved your goal of a single national capital market in terms of administration and regulation. So not only would you not achieve that fundamental objective, but you would also have taken another big step in a binational country in the functional sense.

MR. PERRY: I was going to say, in economic terms surely the first objective is fairly obvious, and that is to achieve a national capital market, and these other things are trade-offs which you may have to make in order to reach more closely that objective than we do at the present time; but I don't think we should confuse this kind of trade-offs with what are the underlying objectives which we should be aiming for, and which I suppose the Fathers of Confederation thought they had conceived fairly well. They must have had them pretty well in their head.

PROF. CREIGHTON: Surely the illustration which you just give, if I understand the argument which you have been advancing up to now, is an exception rather than the rule. You have just been suggesting that so far as the federal government has been concerned, an attempt



is being made to place the provinces in a position of equality and to hand back to them the functions which are theirs. Well, this is a very wide bill, isn't it, indeed if that were done.

On the other hand, surely it is equally true that the process is not a single one but a double one; that in the main, and with certain exceptions, of course, where Quebec demands more, a good many of the provinces want exactly what it wants. In other words, the pressure is coming from both sides, pressure towards a kind of equality of position.

The difference here between Mr. Robarts and Mr. Johnson is considerable no doubt, but they all want a lot more money to carry on functions which they both believe are theirs.

THE CHAIRMAN: Well, they want money to do the things they have to do now, but I think that these so-called "gray areas" which arise particularly in certain economic and financial fields (the example I have just given); that a lot of people (I should use your term Harvey) would be prepared to do some trade-offs and say: "We need more authority in some things, but we will turn over more authority if we were to look at the whole division of the 'gray areas' in a very practical way and say who should now do what, starting from scratch."



PROF. FOX: Mr. Chairman, I wonder if this won't be the really valuable function of this meeting in Kingston, that by having a discussion of the sort we are having now, the federal group in particular (which I suspect does not meet as a group that often) will be able to see some of the problems in relief and perhaps clarify their own thinking on some of these issues. Perhaps we can clarify ours on certain issues.

In other words, this is an opportunity to meet more or less in a leisurely fashion - such as I would think does not usually occur with these hard-pressed federal group in particular; and maybe the most useful thing that would come out of it would be a greater appreciation on their part of the implications of some of the problems that are developing within their own jurisdiction, as it were.

In this sense it could be a very educational seminar without necessarily arriving at any specific conclusions; merely that each individual begins to see problems in relation to his own area more clearly.

DEAN LEDERMAN: As far as "gray areas" are concerned, it is interesting how they arise, and I think they will always be with us.

It seems they arise in the main because more is being demanded of governments in the way



of regulation, and we are now talking about regulating things that have not been touched very much in this country before. This is why the areas are "gray". There is more for all governments to do, and both provincial and federal governments are going to have to be responsible and powerful because what is being demanded of the total of governments we have is growing and getting greater.

I think this is where the "gray areas" come from. As governmental functions change there are always going to be new "gray areas" turning up, and they will always be trying to re-define jurisdiction in relation to them.

MR. MAGONE: The question is, as put:-  
 "How far, if at all, is considerable  
 "change at present necessary in the  
 "constitution?"

Now, the question has been raised that supposing we come to the conclusion that some considerable change is necessary, in this meeting, how do you hope to convince the other nine provinces and the federal government that the change is necessary, after having attempted for forty years (over forty years now) to obtain a formula for amending the constitution in Canada?

Now, insofar as the constitution (meaning the B.N.A. Act, I presume) is concerned,



there are some vestiges of colonialism in the Act, in words, that in practice have entirely disappeared; and there are a number of spent sections, probably about twenty-five or more, that are really eliminated from the Act.

So that what we have left is those parts of the British North America Act that set up the federal state with its legislative powers, and set up the provincial governments - apart from Nova Scotia and New Brunswick which were already set up and simply adopted with their legislative powers. Now, that is practically all that is left in the British North America Act as it stands now.

You may recall that in the last day of 1966 there was a survey published in the Globe & Mail of the positions of the various prime ministers of the provinces in relation to the British North America Act, and Quebec, of course, as usual, was the only stand-out. It wants a new constitution. As I read that survey (I presume most of you have) there was not one of the provinces that thought any considerable change was necessary. They did concede that some change should be made, and that there should be tidying-up done, but apart from that I think the position was it was a pretty good document.



Now, as I see it, if any changes are made they will have to be made in Sections 91 and 92, that is, the distribution of legislative powers. If you will go through Section 91 carefully, I think you will realize that there are certainly very few items in Section 91 that the federal government could give up and still remain a strong federal state. One of them that I can think of at the moment, of course, is the control of fisheries which is now, for all practical purposes done by the various provinces. Their incorporation of companies power is under the Peace, Order and Good Government clause, because there is no enumerated clause for the incorporation of companies in 91.

is

Of course, the big issue now, and always will be, money. Ontario has been in succession duty and estate taxation since 1892. I venture to say they were in the personal income tax field before the federal government was. Originally it was a delegation to the municipalities and the municipalities imposed income tax, but the basis of their tax rate was fixed. So that in Toronto at that time the basis was about 30 mils, and if you lived in one of the townships around Toronto your basis was 70 mils. Ontario at last took that over and then the Dominion entered the field in 1917.



MR. PERRY: Just as a matter of fact, Ontario took over the municipal income tax in '36. It came fairly late in the day. At the same time, there was a highly developed municipal income tax in Ontario at confederation. They had started before that even.

MR. MAGONE: Yes. I don't know when it started, but it was in force in the twenties.

MR. PERRY: In the 1840's they started.

-----Short recess.

THE CHAIRMAN: Before we broke off, Mr. Magone was raising some very interesting and pertinent points. If we look at this subject:-

"How far is considerable change at

"present necessary in the constitution?"

I suppose the question it goes back to is, as Mr. Perry was just saying, the question of 1867: why have we constructed a nation at all?

MR. MAGONE: I should end my sermon by saying that under the British North America Act we did start out, as the terms of the Act indicate, as a colony subject to the disallowance of our laws by London, and the executive of Canada being vested in the Queen - no suggestion of responsible government; and that Canada has evolved from colonialism to nationhood under the terms of that Act.

I suppose that one could point to the



first preamble in the British North America Act as the text of what has been done, when the first preamble states that the constitution of Canada is likened to the principles of the constitution of Great Britain. End of sermon!

THE CHAIRMAN: Harvey , you were about to say -----

MR. PERRY: I was just going to add to your rather bald statement of what the question was, that I saw it more specifically in terms of the question of why we have a national government in the country. What are the objectives we are seeking in setting up that national government?

Obviously we can almost instantaneously restore equality to all the provinces simply by dissolving our national government. What were the original objectives; to what extent are they still valid? To what extent can they safely be modified to take account of other considerations which seem to be emerging more clearly from day to day?

PROF. CREIGHTON: One of the original objectives, surely the most basic of them all, was to form a nation strong enough on the North American continent to permit survival; because we thought we had certain institutions and ways of doing things which were different and which



we believed could only be preserved with a fair measure of strength in central government. This seems to me to be an objective which is just as valid to-day as it ever was.

MR. PERRY: This would include economic survival, of course, survival in that way.

PROF. McWHINNEY: What is the modus operandi of the conference if one is correct in suspecting there won't be initiative from the federal side in starting the debate? Will particular people in effect assume responsibility for presenting the alternative policy positions in this?

I say this, for example, because I am convinced that the Trudeau formula for the constitution and the immediately past federal formula (which I suppose you could call the Pearson-Pepin formula) seem ultimately to go in conflicting directions, and you cannot ride both horses at once.

THE CHAIRMAN: What was the earlier position?

PROF. McWHINNEY: It seemed to me that what I call the Pearson-Pepin formula (I get most satisfaction from Pepin and his elaborations of it) was a recognition of the particular constitutional status through creation of glosses on the constitution and the nature of opting-out



formula. It has elaborate machinery for preserving a general rule, but allowing multiple exceptions on the part of one or more, but in this instance one, province.

It seemed to me that is incompatible really; it is sort of in opposition to the Trudeau position.

In terms of the Kingston meeting, I think to discuss question (a) you have got to establish the policy options, recognizing they are perhaps ideal types, they are abstractions that nobody ever maintains a position in an ultimate sense. You get a certain amount of action, but nevertheless somebody at some stage should pose the question: Where is one going? Is one easing out of the particular status at the federal level in favour of equality of provinces and a decentralized federal system?

But who is going to do this? Is it expected, Mr. Chairman, that individuals from the group would present positions?

THE CHAIRMAN: At the beginning at least, there will be an introductory statement.

PROF. McWHINNEY: Professor Brady going to run through the range of options and hope to strike a -----

PROF. BRADY: Not to answer all questions.

PROF. McWHINNEY: Are you going to pose



questions, as Gertrude Stein used to say?

PROF. CREIGHTON: These two positions, which seem to me to concur very accurately, we will say, with Hansard record, may be completely antithetical in their general purpose, but they are equally destructive of a strong nation.

PROF. McWHINNEY: Then, you see, there is the third position, which really was on the whole, if one can put it this way, the Anglophonic academic position certainly up to the war and the immediate post-war years: that you accepted a centrifugal movement as an historical law of federal states, that you would get an increasing centralization of power in Ottawa and increasing assumption by the federal government, with the provinces' concurrence, of responsibility for policy-making in economic and social fields.

So there you have really three basic positions.

PROF. CREIGHTON: That has not been mentioned up to now.

PROF. McWHINNEY: The federal government has largely abandoned ----

PROF. CREIGHTON: That's the trouble.

PROF. McWHINNEY: I suppose Mitchell Sharp would be wedded to that.

PROF. CREIGHTON: On the financial side.

PROF. McWHINNEY: He is not a philosopher,



but I think his economic policies tend to reflect such an anterior view.

DEAN LEDERMAN: Mr. Chairman, I don't think we need to fear that this group of people from Ottawa will withhold their opinions. I think in private they are going to speak very frankly. Gordon Robertson, for example, is no drifter; he has views and we are going to hear them, I am sure. Mr. Bryce and all these people, they all have views. They will no doubt be careful in some cases about the way they state them, but I don't think we have any problem in stimulating them to speak up and speak out. I am sure they will do this.

PROF. McWHINNEY: Have they conceptualized them? It is not really their function in the particular departments. This is really the political responsibility, the government, and it seems to be lacking at the moment. Nobody has tried to call it.

DEAN LEDERMAN: These men are not departmentalized. Finance pervades the whole of the Government of Canada. Robertson is the Secretary of the Cabinet which deals with the whole range of governmental business. I don't think there is any problem of that kind here.

MR. STEVENSON: Mr. Chairman, I think



if one is likely to get conceptualization from the federal people, my guess would be it would come much in the form of the way Al Johnson presented it last week in the paper which you have before you, where he did put down the four alternatives as being more centralization, more general decentralization, special status or associate state for Quebec, and fourth - the one which he has been pushing and which may seem like a paradox: strong regional governments and a strong federal government, where in one sense it may be called the Trudeau position but in another sense it is Department of Finance position, whereby you do draw a sharp line between the two but you make pretty sure that each in its own sphere is given plenty of opportunity for developing initiative, strong policies, this kind of thing.

PROF. McWHINNEY: That is not the original Trudeau position, although it may in the political process end up as the final one. Trudeau speaks with not necessarily full accuracy of an original historical meaning of the B.N.A. Act interpreting the constitution strictly; which, as he has developed it, means really taking all the federal initiatives out of the education, health and welfare area.

I suppose if you had governments



equally committed to activism, you could maintain such a policy, but, I suppose, might mean concentrating on symbols at the federal level.

For example, the foreign affairs thing, which I have always felt to be rather a phony issue, could be taken as a sign of strong federal government, simply to lay down: "We will make all agreements, trans-national or otherwise. We will maintain our symbols".

MR. STEVENSON: Certainly the way this particular approach has been put into practice in the last few months by the federal people has not been strictly on the symbolic side. The adult education measure is an example of an attempt to divide up and then have strong federal initiatives to take place in what is conceived of as the federal constitutional side.

PROF. CREIGHTON: Surely this is a very trifling aspect of our education. I mean, what did Alec Cory say about it? Is this to be the role to which the federal government is to be reduced in education, this training of mature people for trades or something like that? He bewailed this. It seems to me a very minor and insignificant aspect of education if this is all that is left to the federal government.

MR. STEVENSON: I was going to cite



another example or two where I think this sort of discussion of the financial institutions is a good example of where the attempt would be to really come at a very specific delineation in the whole area of securities regulation, regulation of financial institutions, and then for a federal government to use its full capacity and initiative and operational capabilities within that sphere.

DEAN LEDERMAN: Lest my silence be taken to be some kind of assent to this talk of giving up the federal incorporation power, I am very much opposed to it; this idea that the federal government should give up its power to incorporate companies which by their original charter have a nationwide franchise. I would man the barricades against that proposition.

PROF. McWHINNEY: Can I ask you, following up Bill's point: is Johnson himself - I haven't had an opportunity, even as a lawyer experienced in reading a thousand page brief on the way to court, I haven't yet read the Johnson paper in these few minutes I have had it; but it seemed to have at least some policy thinking behind it. Is this his own creation or does it reflect Mitchell Sharp for example, or whose ideas are these really?

MR. STEVENSON: At lot of them are



Johnson's. I think Mitchell Sharp reflects a lot of them. Maybe there is a bit the other way too, but this is essentially Johnson's own paper. However, it certainly represents thinking which has been reflected pretty carefully in the federal span of recent federal-provincial negotiations in the financial end.

PROF. McWHINNEY: That makes Bill's question rather interesting, because if you associate it with the Finance Ministry it seems rather surprising. I would have thought one of the last things one would give up was the federal power to incorporate companies.

MR. STEVENSON: I wouldn't think that in here though there is any kind of implication that the federal government would.

PROF. McWHINNEY: I wouldn't think it was an important measure of general -- I speak as a non-economist - control of fiscal policy.

THE CHAIRMAN: What, incorporation?

PROF. McWHINNEY: Yes, the incidences that come with the power to incorporate.

DEAN LEDERMAN: I don't think you can achieve any simplification by depriving either provinces or the federal authorities of the wide power to create corporate bodies. I don't think any simplification can be achieved that way, and it would be just a fruitless



exercise. The power to create a corporate body has to be distinguished from the power to regulate what corporate and other persons do.

PROF. CREIGHTON: If strong central government is to be one only of symbols, as Edward suggested, this does not take us any further.

Does Johnson consider, for example, the point which Bill Lederman has been interested in and has been stressing for some time, and that is the real, effective control of the federal government, for example, by the constitution over banks and banking? This seems unquestionable, and why should it not be asserted and completely without qualification by a strong federal government? If this is the object, to make strong provinces and a strong federal government, this is one area in which it might be done. Is that your view?

DEAN LEDERMAN: I think the federal power to control banking is complete now; there is nothing more to be done, as far as giving them power to do it. Whether they want to assert their power is another matter.

PROF. CREIGHTON: This is one area in which it might be done.

MR. PERRY: The power is clear, but no one knows what "banking" is.

PROF. McWHINNEY: Would you say a



province would not have the power - provincial banks?

DEAN LEDERMAN: I don't know a great deal about the structure and functioning of financial institutions, and there is a wide range of different kinds of financial institutions.

I am sure Mr. Perry is right when he draws our attention to the fact that a pure trust company, that is, just administering assets on trust terms, is not banking. Then the Bank of Montreal, of course, is engaged in pure commercial and savings banking, and there are many shades of things in between. This is where the difficulty comes, not in who can incorporate them but in who can regulate them.

THE CHAIRMAN: And inspect them and so on.

DEAN LEDERMAN: Yes, the Royal Trust Company does business all over Canada under a Quebec charter, but who can regulate them in this way or that? Not who is giving them their first charter.

PROF. FOX: Can I ask about the Ontario Provincial Savings Bank? Is there not an entity ---

THE CHAIRMAN: Yes.

PROF. FOX: What is that and by whom was it chartered or incorporated?

THE CHAIRMAN: Cliff can tell you, I am sure.



MR. MAGONE: This is, I was going to say, a guess, but it is perhaps a little more than that. Was it done during the regime of Mitch Hepburn?

MR. STEVENSON: Was it not the U.F.O.?

MR. MAGONE: U.F.O. was it?

MR. STEVENSON: Yes, I think it was originally established in 1921 or so, basically as an agricultural credit institution.

MR. MAGONE: You are probably right, and the purpose was to obtain money to loan to farmers.

MR. STEVENSON: Right, but as time went on it became less and less its original agricultural development bank purpose.

PROF. FOX: Is it a bank in the sense we are using the term?

MR. MAGONE: Of course, it is a bank, Paul, in the same sense that a trust company is a bank.

MR. STEVENSON: Deposit-taking institution.

MR. MAGONE: If the Parliament of Canada wants to define what a bank is, I think they can probably do so and control trust companies insofar as their banking, that is, taking deposits, is concerned, and it would have an effect too on the provincial savings office, but they have not defined what banking is.



MR. PERRY: The Carter Commission, for example, did not think that the acceptance of deposits was enough to constitute banking; that there had to be the right to transferability by instrument: in other words, the right to write a cheque against those deposits. Most savings institutions are not of this kind. If you want your money you go in and withdraw it; you do not have the right to issue an instrument to a third party which they can in turn either cash or use as a form of payment.

Then it gets a pretty involved position, and the question is: What is the function of banking, what kinds of gradations of assets are involved, what conditions of transfer of those assets?

THE CHAIRMAN: I suppose there are three functions which only a bank possesses. There is the taking of deposits or savings; there is the granting of loans; and there is the chequing privilege, transferability privilege. The bank has all of them.

MR. PERRY: The fact that they will acknowledge as an order to them a statement written by one of its depositors that a third party can come in and either cash the order from a deposit or else use that instrument almost as currency. Not many institutions in Canada are of this character.



THE CHAIRMAN: But this is where the whole problem has arisen in the new look for the trust companies, is it not, because in addition to their trusteeship activity they have taken on these accounts.

MR. PERRY: They have never had cheques which are orders for payment.

DEAN LEDERMAN: Section 91 impressed me with the idea that the British North America Act set out to put the whole of banking in Federal hands, because you start with:

"14. Currency and coinage

"15. Banking, incorporation of banks  
and the issue of paper money

"16. Savings banks.

"17. Weights and measures.

"18. Bills of exchange and promissory  
notes.

"19. Interest

"20. Legal tender."

If you add those things up, it seems to me that banking in the form of either savings companies or commercial banks - the difference between a commercial bank and savings banks is in here.

PROF. FOX: Savings banks are a federal function?

DEAN LEDERMAN: 16 specifically says 'Savings banks'.

PROF. FOX: How did any province get



the authority to establish what is essentially a savings bank?

DEAN LEDERMAN: What is not forbidden is permitted, and any legal person in Canada in the banking business, if he obeyed the laws of the regulating authority and the regulating authority does not do much regulating ---

PROF. McWHINNEY: Nobody had either sufficient constitutional interest in the legal sense to challenge it, or nobody had sufficient interest in the political sense.

MR. PERRY: An effective deterrent is the provision of the Bank Act that only chartered banks can use the terms "Bank, Banker or Banking", and if they cannot use those words it is a considerable handicap.

PROF. FOX: Like Chiropractors?

PROF. McWHINNEY: This is one of the few federal systems where the provinces do not have the power to form savings banks. For example, Australian provinces all have provincial savings banks.

DEAN LEDERMAN: The so-called Quebec Savings Bank is federally chartered. I would say that if the Federal Parliament wanted to do it, it could regulate the Province of Ontario Savings Bank operations.

PROF. FOX: That is what I was getting at.



DEAN LEDERMAN: I don't think as a matter of diplomacy they would try, but they could do it.

PROF. McWHINNEY: It is probably not good federalism to try to regulate beyond a certain point. U.F.O. is a perfect example. You can see quite an obvious case for wanting to start the bank, and under ordinary federal principles most federal systems who give the provinces power to do this thought it made good sense.

One would only have to regulate if they tried to use this Ontario bank for purposes of damaging the national economy. I take it this has never arisen, so you have never had an adverse legal challenge.

Bill's point is essentially that the thing is not unconstitutional until the Court rules it to be so.

MR. MAGONE: The only thing it does, they say: "We will accept deposits at a rate of interest" and that is all that the Ontario Savings Office does primarily. There is not much difference in that than issuing bonds.

DEAN LEDERMAN: It is the Crown in Ontario accepting deposits, and my point is that you have to distinguish between where the legal personality comes from and the power to regulate what the legal person is doing.



You know the Empress Hotel in British Columbia. The hotel is a Canadian Pacific hotel operated under a federal charter by the Canadian Pacific, but for a minimum wage and maximum hours provision it was said to be under provincial regulations. There you are. The two things do not necessarily run together.

Then there is the point where they do come together because the incorporating power has something about whether the company can issue shares and the circumstances under which it can issue shares, and there is a power to regulate your own corporate creatures that goes to some extent.

I think, as in a number of our other "gray areas" there is a gray area developed here. The only solution, I think, is to acknowledge that you have got concurrency and use the rules about paramouncy in concurrent fields and occupations.

PROF. MEISEL: What is the position of the "caisse populaire" in relation to Ontario?

MR. PERRY: The position as far as Ottawa is concerned is that a certain definition of "banking" would make them all banks, and there are 4,000 of them and they do not want that many banks. A definition based on the mere acceptance of deposits would immediately constitute between four and five thousand credit unions and the Caisse Populaire as being banks, all of them



required to keep deposits at the Bank of Canada and all the rest of it. So this is one of the tricky areas.

PROF. McWHINNEY: You mean neither the Federal nor provincial government wants it?

MR. PERRY: At the moment they are creatures of the provincial government.

PROF. McWHINNEY: And at the moment -- I do not think the Quebec government made a strong point of this, but that it does not want federal regulation, simply because the Federal Government shows no enthusiasm.

MR. PERRY: They are not anxious to get into this broad field either.

MR. MAGONE: I do not recall any case (unless you do, Harvey) where any court has attempted to define 16 and 91 as to what is banking.

MR. PERRY: There are very few. Our own counsel have found one recently in Winnipeg in which someone contested the right of an organisation to make a collection of a loan that it had made to him. He was contesting it on the ground that this organization was not a bank - a rather weak sort of argument. At any rate the Judge was forced to look at the argument and decide what was a bank. I think Peacock was the judge involved or Primrose.

Anyway, you are quite right, that there



is very little jurisprudence on the subject.

DEAN LEDERMAN: There is a case in the last few months in Saskatchewan with Mr. Justice [redacted], just at the trial level so far, but this is the most careful case going into it that I have seen. He was working on this concurrency angle, that there is such a variety of financial institutions that actually there is quite an area of overlapping between your federal and provincial jurisdiction, and it is a concurrency problem.

If the Federal Government wanted to go to the limit of its constitutional power - which, mind you, it has never done, I don't think ---

MR. PERRY: Mitchell Sharp gave a little lecture on this to the Committee on Finance, Trade and Economic Affairs which is holding hearings on the Bank Act. He had been under pressure from the Opposition to include in the new Bank Act a definition of "banking". He appeared before it and made a statement to the effect that his officers, officers of the Department of Justice, had advised him that this would be beyond the powers of the Federal Government: that this would be tantamount to making an interpretation of the constitution, which would be beyond their powers. What they would have to do - and he proposed that it be done - would be that he thought he would do it as a separate statute only for certain purposes where the word "bank" or "banking" was defined in



such a way, having in mind that this would have no validity until it had been looked at by the Supreme Court. This would not be binding until there had been jurisprudence.

MR. MAGONE: I would not suggest the Parliament of Canada has any right to define the word "banking" in such a broad way that it would include, for instance, some of the trust activity of trust companies. It would be for the Courts to determine what section 16 and section 91 of the B.N.A. Act mean, not for the Parliament of Canada.

DEAN LEDERMAN: On these outside limits of the meaning, I think Mr. Sharp has either had bad advice or he has misunderstood what he has been told.

MR. PERRY: Maybe I am misunderstanding what he has said, it is equally possible.

PROF. FOX: Could I ask two other questions? Are all trust companies incorporated by provincial authority? Are there any federal trust companies? Secondly, what is the Banque Canadienne Nationale, is that provincial?

THE CHAIRMAN: No.

MR. PERRY: That is a chartered bank.

THE CHAIRMAN: It is federally chartered.

MR. MAGONE: Mr. Chairman, I think the Guaranty Trust Company of Canada is a federal incorporation, and probably the second or third



largest in Canada.

PROF. McWHINNEY: All you have really established, and this conforms to practice, general rule of federal states, the banking power is concurrent. It is a sensible rule, but there is certainly a stage where you get into issues of fundamental control of credit and expansion, and your national interest becomes paramount. It seems pragmatically this is what has been worked out here, although the 1867 provision is quite categorical, making it federal.

MR. PERRY: This was true, because prior to that the chartering of banks had been under the provinces or colonies, or whatever they were called, and there were two or three disasters, bank failures during the 1860's, and one of the objectives was to establish some tighter uniform rules within the new government.

PROF. McWHINNEY: So if we are talking about areas where changes would be desirable in the working of the constitution, one could say that a change that reflects the present practice as far as banking, Dominion-provincial banking, would make sense, that is to say, making the power concurrent but establishing priority or primacy of federal power in banking where it comes to what I would call fundamental issues of finance planning. I think this can be worked out without too much difficulty.



MR. PERRY: With all respect to the people who have been discussing this, I think Ed is getting us back to earth in saying there are some fundamental issues behind question (a). The more basic question is: considerable change for what purpose, with what objective in mind? What are the underlying objectives for which we want to change the constitution.

THE CHAIRMAN: Which comes back to the question of the objectives of our federation.

MR. PERRY: Again, if I had the making up of this list, I would have put this first, because the first question is, what do we think is wrong with our present arrangement? Surely we must have some sort of criteria in deciding what things are wrong. They are wrong in the light of what?

DEAN LEDERMAN: We are discussing Mr. Roberts' list.

PROF. McWHINNEY: One of the simplest methods of approach using the terminology of the socialist school of law: the difference between the law in books and the law in action. The gap that always emerges with any constitution that works, always shows a difference between what is drafted and what is actually happening. and although it is not an absolute rule in legal change, it often makes sense to match up the gaps.

So where you have a situation where the



constitution as drafted takes a very categorical position on banking related to the casual political events of 1867 or prior that Harvey mentions, but the practice is rather different, everybody seems to have admixed good sense: then there is your case for change, and you could find this in quite a lot of areas of the constitution, proceeding really from problem area to problem area.

MR. PERRY: This is drawing a pretty long bow. I haven't seen any evidence that the provinces really want the power to control banking.

PROF. McWHINNEY: But they are doing it, aren't they?

MR. PERRY: Most of them are frightened to death of it. They are doing such a bad job of it now ---

PROF. McWHINNEY: It was established really beginning with this U.F.O. experiment in 1921, they have gotten into the banking area.

MR. PERRY: This is chicken feed. Nobody cares about it, not even chartered banks.

DEAN LEDERMAN: But it is the protection of the investing public that is involved.

MR. PERRY: The fact that there are now hundreds of small trust companies under provincial charter which are not being regulated, nobody is more aware than the provincial authorities.

PROF. McWHINNEY: If you were trying



up, I suppose you would say that in fact the banking power is being exercised concurrently, and the real policy issue is how much control and where it should lie.

From what you are saying, the provinces would not be unhappy if the Federal Government assumed wider control powers over these de facto provincially-sponsored banking operations.

MR. PERRY: Always excepting Quebec.

PROF. McWHINNEY: Even Quebec I thought.

MR. PERRY: I don't think so.

PROF. McWHINNEY: With the Caisse Populaire, is Mr. Johnson anxious?

MR. PERRY: Literally no one is worrying about the Caisse Populaire.

PROF. McWHINNEY: Although it has a political element.

MR. PERRY: Although it has a political element, but they have a good many smaller incorporations, trust companies, lending agencies, finance companies, and (within these four walls) for the last year or so in the case of about half a dozen they have literally been held up by the boot straps by the chartered banks, at the request of the Federal Government mainly.

MR. MACONE: The boot straps have broken in some cases. Prudential was one of them and it was not a banking institution, it did not take deposits in the sense that the Royal Trust Company



and the Guaranty Trust Company did; it loaned money, it borrowed money.

MR. PERRY: There is no supervision that is going to cope with crooks, that is the main problem with Prudential defaulting - defaulters.

PROF. FOX: What are finance companies, are they federal or provincial institutions or both?

THE CHAIRMAN: They are both. One that ran into trouble recently, Oshawa Acceptance Corporation, was a federal corporation. Prudential is provincial.

PROF. FOX: How do they fit into the constitutional pattern? Are they simply institutions that have grown up without any specific ---

THE CHAIRMAN: They do not seem to fit into any pattern.

MR. PERRY: They are not banks; they do not accept deposits.

PROF. McWHINNEY: Cliff, you must have ruled on this at some stage.

MR. MAGONE: I don't think I did. It is property and civil rights. I would say, but not only that, they are controlled of course by the Federal Government on the enumerated power of 91 over interest.

THE CHAIRMAN: What about bankruptcy?



MR. MAGONE: Well, bankruptcy, that comes after, but their interest rates are controlled.

MR. PERRY: A lot of them are provincially incorporated entities.

DEAN LEDERMAN: We are back to the point that you made, Mr. Chairman, about the National Capital Market: is the nature of the thing being regulated such that it can only be done effectively by the national authority on the basis of the whole national territory? This is the critical question that we are asking: whether the present position is satisfactory or what changes there ought to be. This is to me the basic question on the whole realm of securities regulation; is the security regulation by provincial schemes breaking down? They never really "got the goods" on Mr. Justice Landreville, as he formerly was. This could not be discovered in Ontario, under the Ontario regulatory apparatus, because it could not rule what had been done in British Columbia. When somebody got to the former head of the Securities Commission in British Columbia who had by this time fled to New Zealand, they got the story that started to come out; but if there had been a national securities commission as there is in the United States, with a franchise to operate in the whole of



the national territory, then you would have had better control.

The basic question about federal powers in the constitution is still the old one: what matters what subjects, what things needing regulating are such by their very nature that they need a unified regulation for the whole of the national territory, which you cannot really do properly province by province? One of the speakers in the Confederation debate (I don't know whether it was Mr. Nixon or Mr. MacDonald) made this point very well, I thought.

THE CHAIRMAN: Certainly in the Prudential Finance case, the victims in this case were trapped by a jurisdictional issue. You had a provincial incorporated company on the one hand, but the bankruptcy provisions, as I understand it, in the other jurisdiction, and the question as to who moved in, when and how.

Now, as Harvey keeps reminding me, I do not want to get too far into the mechanics of the banking business here. We are looking at this as a problem in, I suppose, the reform or improvement of the system.

MR. PERRY: Mr. Chairman, it seems to me that in asking this first question:

"How far, if at all, is considerable



"change at present necessary in the  
"constitution"

An intelligent answer can only be given in the  
sort of context of the Premier's own second  
question:

"What are the particular objectives  
"we think our Confederation should  
"be striving to achieve?"

In other words, if we feel that change  
is needed, it must be in the light of some ways  
in which we feel we are failing to meet our  
objectives. What are those objectives?

DEAN LEDERMAN: Is it worth holding  
the country together and, if so, why?

MR. PERRY: This may sound naive ---

DEAN LEDERMAN: Anything fundamental  
usually is.

PROF. CREIGHTON: Can you help us with  
what our objectives are?

MR. PERRY: Well, from an economic  
point of view, I think there are certain things.  
I think one can almost close one's eyes and say  
that an issue of anything which crosses provincial  
borders, any transaction involving more than one  
entity in the economy, can be dealt with best  
on a national basis.

What are trade-offs? What do you lose  
in backing away from that position of a recognition  
of other aspirations?



I am not an absolute centralist, I do not wish to imply in making that statement (there are other considerations) but what price do you pay for recognizing? Is this economic heresy, Ian?

THE CHAIRMAN: No.

PROF. BRADY: It seems a reasonable position, but on the other hand there are some very odd interpretations of what is an interest and what is a national interest. I do not think it is easy to get agreement on that. This is why I think even the lawyer's statement Dean Lederman made a moment ago about what was national in nature - what is national in nature? I think you get a great variety of views on that. Society is made up of countless interests and groups of people who view what is national differently.

In the provinces there are obviously many interests that think certain things should be provincial. They may be ill-advised about that from some angle, but they take this view. One does not need to go to Quebec to find, as it were, a provincialism of outlook in interpreting what is national or provincial. You find it in any of the provinces, and I am afraid this is typical, in discussing this (a), when you come to defining objectives. Will this state objectives? Can you state objectives simply? I find difficulty in doing so.



PROF. FOX: On that score, for example, turning the proposition around, one can make up a good argument for the fact that education was of national interest, a very plausible argument.

DEAN LEDERMAN: Or at least in part it is.

PROF. FOX: Yes, this gets even more complicated if there are aspects of these different sub-heads.

DEAN LEDERMAN: I go on record to this effect, of course, that always there are different aspects and always we will be struggling with these twilight zones. I do not bore you with repeating myself on that point.

PROF. McWHINNEY: You can, however, in this area, categorize the problems under, for example, two broad heads: what I would call bicultural issues and non-bicultural issues.

I think the interesting thing is that in areas of an economic and fiscal character, there is a very noticeable tendency in Quebec to get a response not terribly different from, say, Ontario.

Mr. Johnson, for example, is a very good politician in the area, for example, of finance, control of finance companies. There tends to be a logical answer that has nothing to do with the bicultural issue but has a great



deal to do with political survival and the principle of non-implication in specially dangerous or unpleasant areas.

I would think in certain problems of this sort there would be a very substantial degree of consensus as to particular institutional method of solution. In other words, I do not think you have to accept the fact that the two different cultural areas will have different responsibility all along the line. The more technical the problem, the more likely there is to be a general consensus. Maybe one could, with usefulness, proceed to make preliminary categorizations that these are biculturally affected areas and therefore likely to have different interpretations of what is national and what is not national, depending on the ethnic and cultural background, but other areas as such where these differences won't occur.

MR. PERRY: Alec is absolutely right and I agree with him, but we have set up national government in this country, and surely we thought it would have some kind of defined realm of responsibility. This changes from time to time and yet there it is: it continues to function. There must be something we expect of it. What is it?

DEAN LEDERMAN: I suppose I am being simplistic about economics because I know very



little about it, but, for instance, Canada is seated in an international economy, and to what extent do we have to behave as one unit if we are going to keep our feet in the international world? The length of production run and that kind of thing that will keep us alive in the western world; what will keep us in competition with the United States. There must be a lot of this you cannot handle with ten units, that you have to handle with one unit.

I think one feature of the quiet revolution in Quebec and of the economic activity in Quebec is they have realized that to maintain their own culture they must have a strong economic base for it; they must have full employment, or as soon as possible, and they must have a prosperous economy among the French-Canadians. It may be they cannot have this, they cannot reassure themselves on a provincial basis, but can only have it by participating in a strong federal authority that can manage and control our economy to the extent it is necessary to keep our feet in the international world. If the international trading situation goes against us, all our cultures are going to be in trouble.

PROF. CREIGHTON: I should like to go back also to Professor Brady's remark a few moments ago. It is perfectly true, of



course, that there are a great many views on what is national interest. The very fact that there are a wide variety of interpretations of the national interest surely does not prohibit us from trying to make up our minds about the matter. I think that is what we are here for, and if we are simply to be paralyzed by the difficulty of the problem, then I think we may as well just stop right away.

4 I think it is our business to try to discover these objectives and to come to some conclusions about them if we can.

I am not much impressed by the argument that if you say, as has been said, that the control of banking and of financial institutions generally is a function which might very well lie and perhaps had much better lie with the Federal Government, that that necessarily means that the national interest also implies that, for example, education should be taken up.

It seems to me that whereas most people would agree that the regulation of banking and financial institutions needs decidedly to be strengthened and improved, on the whole at least so far as secondary and primary education is concerned, this country has had reasonable success. I think another case might be made out for higher education.

I have been looking at this paper of



Mr. Johnson's, and what I have said before has a relation to this general point; because, as our Chairman has pointed out, Johnson goes through several possibilities for the future of the constitution, and this is all I have really been able to gather from a very brief and rather superficial survey of it, but he goes back (I think you said, Mr. Stevenson) in the end to an argument that you could have a strong regional government and a strong federal government.

At first sight this proposition appears to be self-contradictory.. If regional governments are to grow in strength, it must surely be at the expense of the central government.

Then he argues that this is not necessarily the case. Up to that point I think he has been talking about the way in which the provincial governments will have their functions more clearly defined and more satisfactorily supported financially. Then at the end he comes down to the central government:

"The powers of the central government,

"to look at the other end of the

"balance, would also be strengthened

"under this approach. Its authors" --

I do not know what he means by "Its authors" but presumably himself and his friends -



".... point out that adherence  
"by the federal government to the  
"spirit of the Constitution would  
"give it a stronger base from which  
"to resist provincial invasion of  
"federal jurisdiction. The  
"Constitution would be used both  
"ways, in other words: as a basis  
"for resisting federal raiding of  
"provincial jurisdiction, and vice  
"versa."

Then he really in effect makes no specific recommendations that I can see of a strong federal government, and here it seems to me is something in which this Committee, on the evidence that it has heard so far, might very well take a strong stand: that so far as banking and financial institutions in general, we believe these ought to be a federal function in very large measure, if not exclusively.

MR. STEVENSON: Mr. Chairman, a few minutes ago Mr. Perry asked whether or not it was economic heresy to assume that if any kind of economic function had impacts that spilled over the boundaries of regional government then naturally it should go up to the next higher government, presumably the national government.

Now, having been at a session where



a number of economists were arguing this very point a week or so ago, I find even among economists this is becoming a very difficult position.

You have right now quite an argument going on about the provision of what are called public goods, and applying this to a federal system you have the general economic argument that wherever possible you try to eliminate what they call spill-overs - the business of impacts, of a government service spilling over the jurisdiction that is supposed to provide it and influencing the decisions or otherwise of people in the next jurisdiction; or, on the other hand, that it is desirable to move a function down to a lower level of government if the province providing it only provide a very small proportion of people within it with the service.

This argument seems to be polarized into people who take as their basic assumption that you try to eliminate as many spill-overs as possible; and people, on the other side, who say that the main purpose of a governmental system in providing services is to maximize the preferences of individual citizens.

One set of arguments is almost all towards the more decentralist position, that if you were to set up proper mechanism for



negotiating among either competing governments at different levels or horizontally among the same level of government providing similar services, where you do have spill-over effects, then you are more likely to maximize the preferences of individuals if you keep the size of unit providing most government services down pretty well, and then negotiate trade-offs between different governments dealing with the spill-overs.

To get back to Professor Creighton's questions: what economic areas really have to be left with national governments? I would think that you probably do get a fair amount of agreement among economists that in presenting an international face a government does have to have the ability to control a number of its own economic policies - first, of course, international trade policy, the question of tariffs; secondly, the international financial base, monetary policy. Here you must try towards national capital market if you can.

Thirdly, I think there would be general agreement, particularly in federal countries where one of the reasons for the federation is poor areas and rich areas with quite different economic capabilities wanting to have a national government for the purpose of redistribution of income either among the areas or among the people.



Then fourthly, you have the question of fiscal policy that there is a lot of argument as to where the control of financing has to be to regulate fiscal policies. So long as you have the proper machinery, this can assure you of a national mechanism of both controlling business cycles and promoting general economic growth.

I would think that so far as economic theory is going now, there is quite a trend away from the very strongly held belief some time ago that a national government was essential for provision of a great many services, to the feeling that you can more efficiently provide a number of services at lower levels of government.

Nevertheless, I think in the economic sphere this leaves quite a strong role for any national government that cannot very well be broken down.

PROF. McWHINNEY: I said earlier in the Globe and Mail article that Mr. Trudeau needed to give a good deal more thought to implementation of his ideas. Cliff Magone suggested when Donald was speaking on page 36 of Johnson's report, it is in some ways rather a strange title that he applies to his thesis: "Strong Central Government, Strong Provincial Government". It seems to me it is Trudeau



carried to the logical conclusion. Once he talks about satisfying the provinces' full fiscal responsibilities, one he enunciates that happy maxim of Rice, that the government which spends is the government which should tax -

"and bring to a stop the cumulative

"abatement of federal income taxes

"in favour of the provinces"

he seems to be arguing the case for returning income tax, giving income tax powers in a concurrent system of provincial tax departments, such as you have in any federal system. There is nothing specially surprising in the suggestion in terms of comparative federalism. I do not think it is the spirit of the constitution, however, and I am puzzled about the statement -

"stronger base from which to resist

"provincial invasions of federal

"jurisdiction."

5

PROF. CREIGHTON: I was very puzzled about that.

PROF. McWHINNEY: The only one I can think of is the foreign affairs thing, which I have suggested before is purely symbolic.

THE CHAIRMAN: What was that last point, Ted, foreign affairs?

PROF. McWHINNEY: He refers to 'provincial invasions of federal jurisdiction'. The only invasion I can think of at the moment



would be this so-called invasion of foreign affairs power, which is not a terribly important thing in a practical sense. However, much emotion has been spilled over it by Mr. Martin and others.

MR. STEVENSON: Old Age Security, Family Allowances, these are the real keys this year.

PROF. McWHINNEY: But those, under the Trudeau approach, the spirit of the constitution which he seems also to link to original intention, are provincial areas anyway.

What I am saying, he really seems to be arguing the Trudeau case and going even further than Trudeau, but the name this has should be "Weak or Decentralized Government and Strengthened Provincial Governments". It is a viable programme, but it does alter the nature of the constitution completely, and I am not sure this is correct to call it the spirit of the constitution or anything else.

PROF. CREIGHTON: This is my point.

PROF. McWHINNEY: It is a particular philosophical position.

PROF. CREIGHTON: The title is wrong.

PROF. McWHINNEY: The title is a misnomer, I think.

MR. PERRY: One has to understand Johnson a bit. He is a very serious student.



His background is primarily provincial. He was one of the brain boys of the Saskatchewan government and was Deputy Provincial Treasurer. He had a great deal to do with installing many of their what are still fairly modern organizations, such as their budget bureau. During that period he took at least a year's absence to go to Harvard to simply reflect on quite a few of these issues.

In the last three or four years he has switched from a provincial context to the federal, and I would incidentally suggest that he probably has done as much thinking about this as Trudeau has.

PROF. McWHINNEY: But the title is wrong surely.

MR. PERRY: Perhaps the inference moves the other way.

PROF. McWHINNEY: Trudeau's ideas go back at least seven or eight years when he was a simple professor and N.D.P. member.

MR. PERRY: Johnson has a good deal of the influence of his provincial government experience, but on top of this a growing appreciation of the problems they have in Ottawa, and he is trying to blend the two.

PROF. CREIGHTON: I think everybody would admit this, but I only say that this part of his argument seems to be rather feeble at this



point.

THE CHAIRMAN: John?

PROF. MEISEL: I was going to change the subject.

THE CHAIRMAN: I just want to say, if I may, before you do that, I rather read this section as adding up to an appeal for a stronger federal government, because look at this:

"The powers of the federal government -  
 "stronger base from which to resist  
 "provincial invasions of federal  
 "jurisdiction . . . . bring to an  
 "end the cumulative abatement of  
 "federal income tax."

MR. PERRY: That is the clincher right there - no more give-aways.

PROF. McWHINNEY: What about the preceding paragraph.

". . . would avoid the cumulative  
 "centralization of powers by  
 "transferring to the provinces full  
 "fiscal responsibility?"

THE CHAIRMAN: You know what that refers to is the point that the federal government offered last year to turn over these three major shared-cost programmes in exchange for 17 points of the personal income tax. What he is really saying is: "We will turn over those present shared-cost programmes and the fiscal equivalents.



which go with them, but ~~there~~ an end".

MR. STEVENSON: "If you want more money, raise your own tax rates. We won't ~~accept any more~~".

PROF. McWHINNEY: But is he perfectly content to see a full concurrent exercise of taxing power by the provinces in competition, if you wish, between the two authorities?

MR. PERRY: He would love to.

PROF. McWHINNEY: Your Australian system in effect.

MR. PERRY: He said: "You have been beating your breast about autonomy. Go out and exercise it".

THE CHAIRMAN: There is one complication, and it is this. I did not bring this out in my commentary in Ottawa last week because I did not want to open the thing to a kind of confrontation; but the phrase "cumulative abatement of federal income taxes in favour of the provinces" implies surely that the federal government has the right to these and has somehow discretion magnanimously to turn them over.

My understanding is that no one has exclusive right to these. These are a source of equal rights, so that the federal government cannot turn over what is their shared rights.

The real question is how they are going to be carved up in an equitable manner, am I right about that?



MR. PERRY: The question is, the point from which the constitution ---

THE CHAIRMAN: This is it. This is really a political question. They have to have them now, but this is a point that Wacky Bennett brings out in the federal-provincial conferences. There was a time when these things were more in the provincial realm, and because of the depression and war one turned them over to the federal government; but now we are waging the peace rather than the war, and this is being waged largely in realms such as education now.

MR. PERRY: The federal government is saying: "You get yours the way we made ours. We made our case during the war. You make yours during the peace".

PROF. McWHINNEY: If you get an adversary position where you interpret the spirit of the constitution in the Trudeau sense as making health, education, social services essentially a provincial function, your provincial case for revenues commensurate with the resumption of these functions by the provinces is very clear, although it may be politically unpopular to try and sell it.

If Johnson is really saying that you end the abatement, but the provinces get back into the taxing act, then it still seems to me



this is a case for the decentralized constitution. The spirit of the constitution in the Trudeau sense really means saying that the federal government, by virtue of the old socialist notion that you should centralize power, the Laski thesis that you had to be in a position to centralize power, when this is edited in its own way that you can take account of what the constitution envisaged, you would have to, it seems to me, take the next step - tax powers and revenues go commensurate with the responsibility exercised.

Johnson. if he recognizes this, that the cumulative abatement must cease, it seems to me is, recognizing a decentralized central system.

DEAN LEDERMAN: He says:

"and bring to a stop the cumulative  
"abatement . . ."

MR. PERRY: This is an argument that applies to only three provinces - Ontario, B.C., Quebec, "raise your own taxes". The others just do not have the tax potential. Give them all the tax powers you want, but you are still going to have to have a lot of help.

PROF. McWHINNEY: To follow this through, you may have to have a particular constitutional status for three provinces



which are treated as equal and an unparticular constitutional status for others. This is what, again, I meant by saying I did not think Trudeau had thought this through. You can obviously decentralize with your three big industrial provinces, but I am not sure you can with Prince Edward Island.

MR. PERRY: If we had had ten equal provinces, equal in every respect, the federal-provincial problem would be a simple one. It is the mere fact that we had not that makes it very complicated.

PROF. FOX: What about Alberta? You mentioned only three. Would it be three or four?

MR. PERRY: Alberta is strange. In a way they derive a lot of revenue as a government from the oil industry, but it does not seem to have created the kind of dynamic economy in Alberta that one would have expected.

THE CHAIRMAN: George has arrived at a very good point, because I am determined to get this direct tax straightened up.,

PROF. McWHINNEY: What do you mean by that, Mr. Chairman?

THE CHAIRMAN: In my own mind at least.

PROF. McWHINNEY: It is not a political threat.



THE CHAIRMAN: No, because I am puzzled by this. The present situation is that you have a hundred points of personal income tax, and 72 are taken by Ottawa, when you as an Ontario taxpayer pay your tax, and 28 are taken by Ontario.

Now, this is where I want George to tell us about some of these earlier conferences at this point. This personal income tax is a matter which as a field is equally available to the provinces and the federal government.

Now, what we are arguing about always is the divisional point. It has been said that government expenditure is going to expand, and someone will probably have to go beyond the hundred points of the total, so to speak, to bring in extra revenues to meet their requirements of expenditures.

It so happens at the present time that the federal has the political advantage, because they have 72 and we have 28 and the provinces therefore have to go and try to argue for more from the federal.

It would seem, however, that if these are truly shared positions, a position would be to say - let us be arbitrary, let us say we will take the present personal taxes and give 50 points to the federal and 50 to the provinces and let them draw on this to the extent of those needs



and if it still doesn't bring enough revenue it will have to put an income tax surcharge on so that the total package will<sup>not</sup> be more than the 100.

The federal position was "We have 72 and you have 28 in Ontario. . . If you need more money, better charge 32 or 36 or 40 points". Why is it any more valid than to say: "No, we are entitled to a shared field. You give us another 12 points so you will have 60 and we will have 40 and then you charge surcharge, you charge the extra points".

Now, is it only the straight politics of the matter that they have them and we do not?

This is why I would like you to tell us how this argument has evolved, because I was saying that constitutionally we began with an equal right to these fields, but during depression and war turned over more and more to the federal government when central requirements were heavy.

Now people like Bennett keep arguing in peacetime that educational requirements and other provincial requirements are greater at the swing-back.

MR. PERRY: George, this is the challenge of your lifetime.

MR. GATHERCOLE: This is as big a challenge as some I have encountered of late.

The answer I would give, Ian, probably



would not be as agreeable as might some from the province's point of view. I look upon the division of 72-28 as being an adjustment that has been made through bargaining over the course of time. The provinces started out with 5 per cent, then it has become 28, and it has become 28 per cent just by some hard bargaining.

I do not think there is anything sacrosanct in having 28 or 72; it could be 50/50 or it could be 95/5; but the federal government who, from the point of view of hard reality has occupied the field, they had their income tax rates up to very steep gradations during the war, and they naturally wish to hold to the territory that they staked out. They concede by and large it has been relatively small over the course of time, and it has been only accomplished by some pretty hard negotiations.

So I do not think the future is going to change very much from the past. The formula that has evolved is one that is, I think, an accommodating arrangement, formal arrangement, worked out to satisfy the taxpayers' convenience.

That is the way I look upon it anyway. This 72/28, the federal government could say: "We want this much, whatever the same revenues as we are now obtaining, and if you wish any more than you have to raise it. If we require more we will have to raise it. But this can



simply be worked out through a different income tax form. It can be X amount for the federal government and X amount for the province.

PROF. CREIGHTON: Mr. Chairman, you did not ask me to answer this question, but I cannot avoid reminding that what you are talking about is originally a federal tax. You are not really talking about, as apparently seems to be implied by your language, a tax-share established concurrently by the two levels of government. It was originally federal tax and it was not the abatement point. It started relatively late in history. Before that, of course, there were subsidies and grants.

THE CHAIRMAN: My impression was the direct tax was constitutionally concurrent.

PROF. CREIGHTON: Surely it is, but what you are talking about is a tax which is originally a federal tax.

PROF. McWHINNEY: Except from the point of view of historical fact, it has no special relationship, function or constitutional power.

PROF. CREIGHTON: If you want to tax more you can do it yourself.

PROF. McWHINNEY: There is competence in the provincial government to establish income tax of their own to compete with the federal government. One assumes, with the federal



comity applying, that they will get together and agree on equable limits vis-a-vis the taxpayer each government should exercise to save the other financially; but you reach your adversary situation when you get your race to the taxpayer's pocket, and then you have to establish, as has been done in other federal systems, in some cases by judicial systems, who in such case has priority of collection, and to try to establish ceiling limits, who has priority, or are there constitutional law required conditions of reasonableness as to the amount of tax you can impose? Does income tax when it becomes punitive cease to be constitutional?

So the area for concurrent power in taxation obviously rests on the concept of federal comity of a highly developed sort, but in the absence of anything in the constitution or judicial decisions, I think you can say the provinces and the federal government are free to enter into a race for the taxpayer's pocket and let the political responsibility fall on whoever presumably the voters react to first.

THE CHAIRMAN: This is the issue, and I think the problem in this whole exercise is we are always talking about the balance of influence and so on, but the point you have raised to my mind is really the question and that is quite apart from the shares and the



7

proportions and all the rest; given the circumstances of the present in which the proportion of government expenditure as a fraction of the G.N.P. is increasing heavily, is there any way in this federal system to devise joint approaches on what money is spent and what money is raised and, in particular, to establish priorities not only of programme but of timing because, as you say, as it is now, provincial budgets could effectively, by bringing in tax increases, make it politically and practically impossible for the federal government and presumably vice versa, if the circumstances changed.

So that you could in effect have a very severe restriction on not only good financial management but good provision of the right services.

PROF. McWHINNEY: Let us go a step further and say that if the present apparent Trudeau-influenced policy of decentralizing governmental competence or assumption of governmental competence in the social services, education, health and the like were carried through, it is logical the provinces must have more revenue.

If the federal government remains adamant about maintaining the present system of sharing, then politically the next step would be



for a province simply to impose income tax to a level necessary to support its programme, and take the political responsibility for defending that before the provincial electors. It is a big step, but in a way it is logically unavoidable unless the Federal Government agrees, and by a sensible process of re-adjustment of tax revenues, to follow the re-adjustment in the Trudeau spirit of constitutional responsibility.

This, it seems to me, to be the weakness in Trudeau's argument and to some extent in Johnson's argument, when he stops short of getting into these questions.

MR. PEREY: As we have said several times, the real devil in the piece here is that the Federal Government has imposed its own priorities of expenditures and has done it in a very substantial way over the last couple of years, and this has frozen a solid block of the tax system.

MR. GATHERCOLE: We often thought in the past years, we used to think the Federal Government, having staked out such a large area of the income tax or the general tax field, would be drawn to overspend, matters which have lower priority than those in which the provinces had a primary responsibility. So we are always contending that the Federal Government would have a surplus revenue here which would be frittered away in less important services, and therefore it



should withdraw from the tax field to allow the provinces to occupy a bigger share and therefore obtain the funds necessary to finance the services of important and high priority.

MR. PERRY: Then without making judgment as to the priorities, what has happened is that the Federal Government has simply imposed its own priorities without any consultation.

PROF. McWHINNEY: And the provinces have acquiesced.

DEAN LEDERMAN: They have had little choice.

MR. PERRY: I think Ontario has been working pretty hard.

THE CHAIRMAN: This is the whole point. I do not think this whole issue throughout has just been small politics or just a squabble about money. This fundamental question has not been confronted.

For example, there is the question - and I do not put this out in a one-sided sense, at least I hope not - but you get the medicare thing established as a federal priority which immediately is going to add six or seven hundred million dollars a year, but then the federal Minister says: "Well, how you work it out, how you deal with your doctors, and how you keep their fee structure down, you worry about that, because we are not in it. You are either in it or you are not".



Another thing, it seems to me, where we should start afresh and see who is going to do what, the provinces have a long and extensive experience in forestry management. Why do you need a federal Department of Forestry? to put the question the other way, if we have a really effective Department of Trade and Commerce, maybe the provinces should not be in this business at all. There are so many areas in which there is clear duplication. Why not divide up this field and close up half the government departments?

DEAN DILLON: I would like to come back to the point of Bill Lederman when he said we should think of Canada as a nation in the international sense.

I am disturbed this morning. I have heard that the decentralized system seems to be the new approach, the modern one; that the provinces need this money, they must have the money if they are going to provide the services. We have said that social services are better organized, better supplied at the local level.

All this means to me is that we are losing a sense of national purpose, and we have all seen this week or so what happens when one nation starts arguing with another, and one has the sense of national purpose and one does not. The whole balance in the Middle East just changed like that.



I think we are losing sight of this. The world is a more dynamic place than it has ever been before, and therefore conditions, economic conditions and political conditions, change far more quickly than they could in the past. I do not think we are facing up to the fact that if we are going to survive (going back to Bill's point) we have to have a sense of national purpose; we have got to be mobile; and whatever we do, I think some efficient measure of control must reside with the central government. This will never happen unless we have this sense of national purpose. We can talk about it, but I don't think we have got it right now. I think this is one of the things we lack in Canada.

We read in here about "resisting provincial invasions of federal jurisdiction". If we are going to talk along lines like this, we have no chance of forming any sense of national purpose. I think if we haven't got this, we may as well all go home and get on with our provincial affairs.

PROF. BRADY: I think it is necessary, of course, since we are discussing political matters, to recognize political realities. It may be, as you say, that we have not got a very strong sense of national purpose. Well, that is a fact of our development or circumstances.



I think there is a sense of national purpose, but I do not believe that this necessarily means concentration of certain specific powers in the Federal Government. In other words, I think the sense of national purpose can be reconciled with the federal system. In fact, I think it has to be reconciled with the federal system if you have a certain consciousness. In other words, you would not be a nation if you did not have some kind of reconciliation of the diversities that are written into that system.

With these points that we are discussing, I think it comes down very much to a political problem, and to what every political problem involves - bargaining between units of government that have certain authorities, and you have that in a federal system. You have a number of units of government that are always bargaining, that are in the process of constant bargaining; and a good deal of the vital bargaining in your Canadian federal system, it seems to me, in recent years, has been over finance and the exercise of power which involves finance.

The Federal Government started, as it were, in the post-war period with tremendous advantages. It tapped taxing resources that had never been tapped before. It derived during the war an immense income for war purposes, and there is not any doubt that there were politicians



and civil servants in Ottawa anxious to continue to tap considerable resources and do things with the money, and that was resisted by the provinces. We know the severe kind of battle that occurred in the conference of 1945 and 1946 for that matter, the provinces surviving, as it were, in Ottawa, determined they were going to recapture some of the kind of autonomy they felt they were entitled to; and as a consequence of bargaining and pressures and so on in the subsequent ten years, they secured some of the things they wanted, but this process is continuing to the present day.

8

MR. GATHERCOLE: But greatly escalated.

PROF. BRADY: Greatly escalated.

MR. GATHERCOLE: This is the difficulty as I see it today. Despite the rather strong stand that so many of the provinces did take at the Dominion-Provincial conference back in 1945, 1946 and so on, and the green book proposals, and all the rest of it, they were still united. There was a very close bond between them; there was a recognition that we were of one nation; but the trend has taken a very sharp turn, and I think it has taken that in perhaps the last half dozen years

DEAN DILLON: Was not that feeling developed at the time because of the total war effort and so on and the fact that we had been working together?



MR. GATHERCOLE: The federal people, I remember Clifford Clark observing: "well, why shouldn't we maintain fiscal control? We have done a very good job of managing the war, and we can do a very good job of managing the peace and development that is to come".

MR. MAGONE: Was that the green books that were piled that high, with the whole thing cut and dried?

MR. GATHERCOLE: Yes.

MR. MAGONE: And it was all published and the provincial delegates were in the House of Commons and these things were piled up on their desks?

MR. GATHERCOLE: Yes.

MR. MAGONE: Mr. Duplessis said: "I was reading" when he was late coming to get his picture taken; took these books home with him. He said he could not come in answer to a question; he would have to go back and consult his colleagues. Everybody laughed like hell.

PROF. FOX: Wasn't there an ideology with it too, the ideology of Keynesian economics, and this gave the Federal Government a very strong intellectual position to argue from?

MR. GATHERCOLE: Very much so. One of the changes in the system that I feel has contributed to this decentralizing force, is



the Federal Government's concurrence in allowing the flexible abatements. The stand the Federal Government took for so many years was that if you fail to sign one of the tax rental arrangements, then you forfeited the revenue that would otherwise be available to you.

I can recall in the first five-year agreement, although Ontario had the option of imposing 5 per cent personal income tax, it refused to do it but it forfeited the revenue from it, although they did request that the revenue should be made available in the second set of five-year agreements which entered into an arrangement simply because the Federal Government would not make available the personal income tax revenue to it, although it did not exercise its right to the field. So it did sign the tax rental arrangement for both corporation tax and personal income tax.

However, it was following that that Mr. St. Laurent did agree to provide Quebec with the revenue from personal income tax, without signing one of the agreements. Since that time the whole process has proliferated at rapid rate, and there has been a disintegration of the uniform tax system. This has enabled the provinces, and particularly the Province of Quebec which has taken advantage of it, to opt out of all these things and take the revenue along with the service.



MR. PERRY: The terms of staying out or coming in have been made equal, that is what it amounts to.

MR. GATHERCOLE: It is a miscarriage of disintegration.

MR. PERRY: In a sense it has removed the penalty for staying out; one could stay out without penalty.

THE CHAIRMAN: I think we had better adjourn for lunch.

MR. PERRY: You got the answer to your question.

MR. GATHERCOLE: Just bargaining, no difference.

MR. STEVENSON: It might be interesting that last year for the first time in many years the Federal Government share of total government purchases of goods and services increased, and this year it is increasing again, in spite of the Tax Structure Committee projections and in spite of a general trend towards decentralization.

THE CHAIRMAN: It is a result of the integration, because of the integration of the military.

MR. PERRY: Defence programme, the bureaucracy they are building up in Ottawa.

--- Luncheon recess.



--- On resuming at 2.10 p.m.

THE CHAIRMAN: Well, we are at point A, I guess. Perhaps we can speed up the pace.

MR. PERRY: I am not sure we had reached Point A. We were just approaching it.

THE CHAIRMAN: I wonder, I really feel that we have perhaps in our very general discussion said enough to give me the feeling that we are rather a long way away from (a) and (b) in terms of necessity. If you agree with that, I wonder if we might go on with the detailed points, particularly point (c), Bill of Rights, because I think this is bound to come up in the discussion in view of the meeting on July 5th.

PROF. MEISEL: Could I make a general comment? Again I am unfortunately taking us away from the specific, but I think perhaps it should be done, because it occurred to me throughout a lot of the discussion this morning we were really facing a problem of deciding what particular perspective we want to take on each of these points that come up.

We can either talk pretty narrowly as Ontarians presenting the reaction of what we think would be the best solution from Ontario's point of view; or we can think of this as people who realize that certain things would be in Ontario's interest but because of the



positions of, say, other provinces or the Federal Government, there is no hope of achieving what ONtario would really like, so that we have to modify our own position in the light of what we think is politically feasible.

When Mr. Robarts first spoke, as I remember, he argued that as far as Ontario was concerned Ontario was very happy really about the British North America Act and the status quo was just fine, and the reason he wanted to have this Committee was that there were people making demands and wanting changes and he wanted to have some sort of guidance on these; so that in a sense we can either take the line of simply narrowly defending Ontario's position, or we can try to define Ontario's position in the broader context. I think we should make up our minds which it is going to be.

THE CHAIRMAN: Of course, his position has changed a good deal over the two years but, as you know, in terms of statements on his views of constitutional change.

PROF. CREIGHTON: It doesn't seem to me possible to avoid that confusion, because, after all, a good deal of the remarks that were made this morning were made on the basis of what was, rightly or wrongly, considered to be the national interest. Whether that is a nebulous concept or not I don't know, but it was not



simply from the point of view of Ontario that I was talking, at least, I tried not to talk from that point of view. I don't know quite how you talk from an Ontario point of view exclusively or primarily in this matter.

DEAN LEDERMAN: I should think, Mr. Chairman, it is more true of this province than any other, that what is good for Canada is good for the province.

PROF. McWHINNEY: Or even the reverse.

MR. MAGONE: Yes, or the reverse.

DEAN LEDERMAN: Not necessarily the reverse.

MR. PERRY: They cannot both be true.

PROF. McWHINNEY: After all, Charlie Wilson put it originally in the reverse.

DEAN LEDERMAN: I am aware of the General Motors statement and I was paraphrasing it. I wouldn't reverse it necessarily (I would want to think about that) but there is no province has a greater stake in a viable Canada than Ontario.

PROF. McWHINNEY: This is perhaps one of the weak things in the bicultural debate, but there is perhaps no province more easily could stand by itself than this province, certainly in comparison to Quebec, speaking of economic realities.

DEAN LEDERMAN: Start shipping it to



James Bay, I suppose.

PROF. CREIGHTON: Mr. Robarts has said this. That is why I wondered what you have in mind in making this observation.

PROF. MEISEL: From the specific issues, personally I am speaking about my own personal reaction, and I am much more of a centralist in preference than I dare to be when I look around me and see what various other positions are, and I feel there is no point in my running around pressing a position that I know is utterly unrealistic.

(Page 103 follows)



PROF. CREIGHTON: If that means we must all be centralist, I don't follow that reasoning.

THE CHAIRMAN: That is not the normal role of a good advocate, is it, John?

PROF. MEISEL: I think so.

PROF. McWHINNEY: You could put the point more felicitously, John, by saying you accept community policy-making, ever increasing of community policy-making, but are not wedded to any one rigid institutional formula in relation to community policy-making as it must be exercised.

PROF. MEISEL: Thank you.

MR. MAGONE: I must say I have noticed no reluctance among the members of this Committee to put forward propositions simply because they were not politically feasible. (Laughter)

PROF. McWHINNEY: We are politically irresponsible, so we can afford to.

MR. MAGONE: That is what you said, not what I said.

PROF. CREIGHTON: If John's statement simply means that the way to the future is the way to centralization, we may as well go home.

PROF. McWHINNEY: When John accepted my re-statement, he specifically excluded that.

PROF. MEISEL: Thank you.

PROF. McWHINNEY: We are clearly, as both constitutional lawyers and political



scientists, much more sophisticated about community policy-making. Under the old historical laws that were developed by historians, you could not increase community policy-making without increased centralization. I think the modern approach is to say "Not necessarily so". We are simply more institutionally sophisticated than we were, and you can exercise vastly increased -----

PROF. CREIGHTON: The evidence is not all in. . We could have fifty years in this welfare state and we don't know what is going to happen to federal systems under the weight of it eventually or of another war eventually either.

PROF. BRADY: You can't generalize about a federal system anyway. Every federation is *sui generis*.

PROF. CREIGHTON: United States is going the opposite way surely. I think we had better get down to some particulars.

THE CHAIRMAN: I was going to say, the Chair was going to make a confession that it was lost somewhere along this discussion.

PROF. FOX: I think we were on item 2. At this rate we shall be here until next Friday.

PROF. CREIGHTON: Do let Bill Lederman go ahead.

THE CHAIRMAN: I would like to get on to (c), because it is something that is before



us all as well as before the country.

Would you like to speak briefly to this, Bill, in the light of your paper?

DEAN LEDERMAN: I start with an apology for not getting the paper done sooner, but I did get it done by June 15th, which was the date I promised, outside date.

There is nothing much that is new in it. It is focussed on the proposal which Mr. Pearson has made for his conference on July 5th, at which, as I understand it, he is proposing that the Canadian Bill of Rights which is associated with Mr. Diefenbaker's name (as he sponsored it) which is at present an ordinary federal statute, should be re-enacted by each of the provinces so that it will cover the provincial spheres of law.

PROF. CREIGHTON: Whose proposal?

DEAN LEDERMAN: Mr. Pearson's. I was asked last time to do a short paper or comment on this proposal. Well, I have done that as best I can here in about thirteen pages, which, I suppose, is brief for a professor.

MR. MAGONE: Admirably so.

PROF. CREIGHTON: It is simple: that's a good point.

MR. PERRY: Are there one or two pages where you sum it up, Bill?

DEAN LEDERMAN: Well, it is on page 13,



"V - Conclusions".

"My personal opinion is that it might be  
 "a good thing to repeat in ordinary provincial  
 "statutes the provisions of the Canadian Bill  
 "of Rights. Provided we stay at the level  
 "of ordinary statutes in both the federal and  
 "provincial spheres of law, I can see no harm  
 "in this. Indeed, some real good might come  
 "of it.

"Nevertheless, I would repeat two  
 points made earlier.

"(1) No Bill of Rights is a panacea  
 "for all the ills of a modern plural-  
 "istic western society. Large and  
 "oversimplified expectations are  
 "dangerous.

"(2) Specifically, the Canadian Bill  
 "of Rights, by its terms, does not  
 "touch upon the principal issues and  
 "problems concerning our federal con-  
 "stitution in Canada to-day."

I have included the text of the Bill of Rights  
 as an appendix there so that you can see what  
 it does cover.

To go back to the start of this  
 little memorandum, I draw attention first to  
 what I have said in the essay published in the  
 second volume of our papers, the main points



made there.

Then I point out that Section 1 of the Canadian Bill of Rights is mainly personal and political freedoms. Section 2 is concerned mainly with natural justice and procedure before criminal and civil courts and deciding tribunals.

Section 3 is a provision requiring internal review in the federal government of all proposed statutes and regulations for consistency with Sections 1 and 2.

Then I discuss Canadian Bill of Rights as provincial law, and I thought it would be worthwhile to point out in relation to this sort of thing what the Ontario Legislature and the Ontario Government is already doing and has done.

In the Ontario Human Rights Code, 1961-62, as amended in later years including 1967, there is quite a sophisticated operation. It is run by a Human Rights Commission which has been doing a very good job. It is concerned with access to places to which the public is customarily admitted, with the rental of places of business or self-contained apartments and with opportunities for employment.

So here you have an important operation in the field of human rights which is already being carried on in the provincial sphere in addition to anything which the Bill of



Rights would provide.

I suppose you would add something to this possibly if you declared these rights of freedom of religion, speech, assembly, association and the press as provincial laws as well as federal law, but I think it ought to be appreciated that the Province is already doing very important things in this field, particularly in the realm of property and civil rights where it has special responsibilities.

In that connection also, I draw attention to the new legal aid system, because Section 1(b) of the Canadian Bill of Rights speaks of the right of the individual to equality before the law and protection of the law without discrimination by reason of these various things. The Ontario Legal Aid scheme, with its guarantee of full-fledged legal representation to everyone who needs it, and counselling and advice to everyone who needs it, whether or not they can afford it (the gap in ability to pay being paid by public funds), this is really, as I say, one of the most important initiatives taken in a hundred years to deal with civil rights in this country. If we did declare equality before the law in Ontario as a fundamental right and freedom under the terms of the Canadian Bill of Rights, we find



we have already been leading the country, including the federal government, in one of these respects.

There is another point I make here too. We are in the midst of the Royal Commission investigation in Ontario on human rights and fundamental freedoms. The Hon. Mr. J.C. McRuer has been carrying on his investigation for almost three years, and his report will be out in the next few weeks or months. I simply say well it/might be premature to take the action the Prime Minister is suggesting, that is, Prime Minister Pearson, before the McRuer report is in. I think the McRuer report is concentrating mainly on the area that is covered in Section 2 of the Bill of Rights - the area of natural justice and procedure before provincial deciding tribunals, boards, courts and so on. On the other hand, there is nothing in Section 2 of the Canadian Bill of Rights to which one could take objection if it were to be made part of provincial law; indeed, quite the contrary. I should think it politically rather dangerous to oppose implementing the Canadian Bill of Rights, because it is like sort of being in favour of sin and against virtue.

On the other hand, what I am concerned to do in this memorandum is to point out



how much Ontario is already doing in this area.

Secondly, one must not have large expectations about what repeating the Canadian Bill of Rights as provincial statutes will accomplish. I do not think it will accomplish a great deal, although it is quite possibly worth doing.

One reason why I do not think it will accomplish a great deal is the point I develop starting on page 7. The Canadian Bill of Rights omits a great deal, for it does not purport to deal with a number of things. One should emphasize education as one of the omissions.

Certainly so far as French Canadians are concerned, there is no more important area where group rights are being claimed than in education. This is at present in the provincial sphere of law and is not touched by Prime Minister Pearson's proposal. When one adds to this that economic, cultural, welfare and language rights are not touched either, it will be seen that Mr. Pearson's proposal does not really involve the major constitutional issues in Canada to-day. The omission of these things from a document like the Canadian Bill of Rights was to be expected, or at least the omission was the better part of wisdom. It is wrong to think that rights



in the fields of economics, welfare or education on the whole should be or can be dealt with by the "Bill of Rights" technique.

I should mention here somewhere that even on political rights the Canadian Bill of Rights leaves out the right to vote, one of the most important of all.

Then I deal with the interpretative alternatives of construction in the Bill of Rights. The question has been before the Courts. Is it overriding so that it in effect amends provisions in the federal statutory law that are inconsistent with it, or is it merely declaratory of the state of the pre-existing law, and merely providing rules of construction of federal statutes which take hold only if the other federal statutes are in unclear words, not if they are in clear words?

An example that has been before the Courts is the Lord's Day Act of 1906, which forbids the carrying on of one's ordinary business or calling on a Sunday, and the Canadian Bill of Rights guarantees freedom of religion. When you require Sunday closing, are you not requiring an act of religious observance peculiar to Christians?

Now, the wording of the Lord's Day Act is perfectly clear: you are forbidden to carry on your ordinary business or calling on



on Sunday. So that there is no ambiguity to be resolved. So the question comes up squarely: did the provision in the 1960 Bill of Rights override the 1906 Lord's Day Act? The Supreme Court of Canada said it did not.

I describe the main positions taken there, and then on page 10 I argue about the extreme difficulty in issues like this, and point out that there may be virtue in the majority position in the Supreme Court. Mr. Justice Cartwright dissented and was willing to override the Lord's Day Act, but the other four judges in the case were not willing; and while their position was not as logically elegant, I think it may well be the better position.

I merely put these paragraphs in to illustrate how complex these issues really are. That is an illustration that is part of my plea against over-simplification in matters of this kind.

The final section deals with the problems of special entrenchment of the Canadian Bill of Rights in the constitution. The position I take there is that, on the one hand, you have the situation in England where you do not have a series of assertions of civil rights and freedoms gathered together in a



single statute, and the protection of civil rights is a matter of ordinary statutes and simple parliamentary majorities; in the United States, on the other hand, you have this gathering together in the American Bill of Rights of superior constitutional law, and this passes the matter of protection of these rights to the Courts. You have something of a contrast between the parliamentary supremacy in England and the judicial supremacy in the United States.

In Canada I am suggesting that where you gather a series of provisions of this kind into one statute, pass it as an ordinary statute, you are in some kind of middle position between the British and American situation.

To cut a long story short, I end up that this is as far as I would be prepared to go; that leaving it as an ordinary statute means that the legislature can get at it by ordinary majorities if change is needed. In that way though a legislature is less likely to meddle with this type of statute than it is with others. So that there is more security then as an ordinary statute to this type of statute than there is to some others. On the other hand, you have not gone all the way to the American position



where either you have to carry the Courts with you, or you have to get a constitutional amendment through by very difficult procedure, and an extraordinary amending procedure.

MR. MAGONE: Either adding or subtracting.

DEAN LEDERMAN: Yes, exactly ....



DEAN LEDERMAN: Yes, exactly. So I end up with these conclusions on page 13, which amount to saying that I think the Canadian Bill of Rights re-enacted as an ordinary statute in the respective provinces, would not do any harm, it might do some good, but in any event it is not very important in the face of the problems we are facing at the moment.

I do not say that the rights and freedoms and so on recited in the Bill of Rights are not important in themselves. All I am saying is they do not involve using this technique of reciting them in an ordinary statute at the federal level or the provincial level, does not involve facing up to the problems facing the country at the present time.

THE CHAIRMAN: Where did the Sunday bowling case take place, do you recall?

MR. MAGONE: Came from Hamilton.

DEAN LEDERMAN: Yes, Hamilton.

THE CHAIRMAN: In Ontario.

DEAN LEDERMAN: It arose in Ontario.

PROF. CREIGHTON: Might I ask Bill whether the Supreme Court in fact behaved in the Sunday bowling case very much in the same way as it would have behaved if the Canadian Bill of Rights had been an entrenched part of the constitution?



DEAN LEDERMAN: I certainly think the answer to that is "Yes".

PROF. CREIGHTON: It seems to me to behave exactly the same way.

DEAN LEDERMAN: The Supreme Court of the United States, confronted with a specially entrenched Bill of Rights, has on the whole done exactly what the majority in the Supreme Court did. They have had a number of state laws before this. Sunday observance laws were challenged on the ground they were establishment of religion or just the same issue.

PROF. CREIGHTON: My point was rather different. The Supreme Court did not say in effect: "This is simply a declaration of intention. We don't take this very seriously" and so on. They behaved as if it was entrenched, as if it was a serious -----

DEAN LEDERMAN: They were confronted with two statutes that had to be read together, so they did proceed to read them together. What the majority did was to limit the meaning of "religious freedom". They said that a negative thing like telling a non-Christian to close his business on Sunday was not compelling him to any positive form of religious observance.

PROF. CREIGHTON: You haven't got my point. You implied making this an ordinary



statute was not a very significant step; and yet at the same time you implied that if it had been made an entrenched part of the constitution they would have acted in very much the same way. Surely an ordinary statute is significant then.

PROF. McWHINNEY: There is an alternative hypothesis, that they are not terribly oriented towards civil rights.

DEAN LEIDERMAN: Given that the ordinary statutes are there in those terms, then what I say is the Courts have the opportunity to behave as if it were specially entrenched, that is true, and they could rise to this and do it if they wished. I think though this is true: they would be more likely to give a strong interpretation to the assertion of fundamental rights if it were specially entrenched; they would be more likely, I think, to go for the overriding interpretation. Yet the United States Courts, which had the opportunity, did not do it. There seems to be pressure from the social situation, that is the same in both countries.

PROF. CREIGHTON: Irrespective of whether this is entrenched or not, it produces the same result.

PROF. McWHINNEY: Andy Brewin takes your position - and, by the way, he takes it as



my position - in the article in the Canadian Bar Review, but a Saskatchewan Bar Review centennial issue takes quite the opposite position, that the reason nothing has been made of the Diefenbaker bill is that it is not entrenched. I think the N.D.P. is now supporting the entrenchment.

DEAN LEDERMAN: I would not agree with that, as I have said.

PROF. McWHINNEY: I wrote back to Andy and I said I would not agree either, and the reason we had <sup>not</sup> civil rights jurisprudence at the moment was the Court was not terribly civil rights oriented. It just happens to be a rather (small "c") conservative Court.

DEAN LEDERMAN: I would not want to see any special entrenchment without a lot of more careful thought given to what it means and what it ought to be in the list of things that were being specially entrenched.

PROF. McWHINNEY: Is that what you mean by the statement: "Provided we stay at the level of ordinary statutes in both the federal and provincial spheres of law, I can see no harm in this"

The inference is you see harm in entrenchment.

DEAN LEDERMAN: I would see harm in entrenchment at this time, perhaps at any time.



I am not sure I advocate it at any time.

PROF. McWHINNEY: Because of the political problems of entrenchment?

DEAN LEDERMAN: Because this is a changing world. You know how reactionary the United States Supreme Court was at times with the specially entrenched Bill of Rights. It struck down maximum hours laws, it struck down early workmen's compensation laws - all in the name of freedom under the Bill of Rights.

MR. MAGONE: Is someone suggesting there is a difference in interpretation of entrenched statutes over ordinary statutes?

PROF. McWHINNEY: Andy Brewin's point is there is a very definite difference of the psychology of the judicial process.

MR. MAGONE: How would he know?

PROF. FOX: Isn't the argument it is in the B.N.A. Act, and therefore it is more difficult to amend?

MR. MAGONE: I am talking about interpretation.

PROF. McWHINNEY: I wasn't stating Andy as ending the matter, but he represents the view of a wide section of the Canadian Bar, that the failure of the Diefenbaker Bill was that it was not entrenched, and psychologically judges treat as an ordinary statute and ignore it.



I think the argument is it is either fundamental law or it isn't; if it isn't fundamental law, judges will ignore it, particularly if they are fairly conservative judges.

DEAN LEDERMAN: Theoretically it should not make any difference to the reading of the text, whether the text is specially entrenched or not.

PROF. McWHINNEY: Right.

DEAN LEDERMAN: And the evidence, as I say, on the Sunday observance business as between the Canadian Supreme Court and the United States Supreme Court, it hasn't made any.

PROF. McWHINNEY: This is true on the lower court level. When I was doing that article, I read these cases over, for these reasons, up to the Supreme Court level, and you do have a whole series of statements, particularly in B.C. concerning Indians: "We are the judges", you say, "magistrates, district court judges, Supreme Court judges, provincial judges. This Bill of Rights is only a statute and does not bind us". But it is true the Canadian Supreme Court has never said that.

MR. MAGONE: So is the Criminal Code an ordinary statute.

MR. PERRY: Whether this statute had been entrenched or not, its title was The Weekly



Day of Rest Act, and there is no mention of religion in the preamble. Would this have gotten it out of conflict with the Bill of Rights? What did they have in it for conflict with the Bill of Rights Act?

DEAN LEDERMAN: It would be just Weekly Day of Rest Act, I suppose, without any injection of religious connotation.

MR. PERRY: Hasn't this been a system of doing anything you want to get around the Bill of Rights?

PROF. McWHINNEY: There is such a thing as colourable legislation. Mere ingenuity in writing a big title to a bill does not prevent the Court saying "In substance it is designed to do something other than it purported. It is not a day-of-rest measure; it is a religious measure". The Court could do that too.

MR. PERRY: They could say it was a phony preamble.

PROF. McWHINNEY: It is colourable legislation.

PROF. CREIGHTON: If it did that, weekly rest instead of religion.

PROF. McWHINNEY: That is why we encourage judges to be factual and to decide abstract principle in relation to the particular facts.

MR. STEVENSON: Dean Lederman, you have



taken in your paper only the proposition that Mr. Pearson is suggesting that the existing 1960 Bill of Rights be enacted by the provinces.

What about the situation, where would your stand be about whether or not it would be preferable to amend it first? You point to a number of moves there.

DEAN LEDERMAN: Then we have got to discuss what amendments, and I cannot say what I would do until the new statute is drafted.

MR. STEVENSON: Do you think it would be better to improve it before the provinces take it over or not?

DEAN LEDERMAN: No, I don't. At the moment I think it is largely irrelevant to our confederation problems, and if the price of peace is to quietly enact it in the provinces this will do neither much good nor much harm, but it just is largely irrelevant to things we are trying to grapple with.

MR. MAGONE: This is a statute like the Liquor Control Act: no one will want to touch it after it is enacted.

MR. PERRY: Sounds an awful lot as if Diefenbaker wrote it himself.

PROF. FOX: Could I ask how many other provinces have comparable bills that might pass, or statutes that might pass as



Bills of Rights? You quote the Ontario case, but I am wondering about other provinces that already have on the books something that purports to be.

MR. MAGONE: Has Saskatchewan got one?

PROF. FOX: Saskatchewan was one I had in mind.

DEAN LEDERMAN: Fair accommodation and fair employment statutes are pretty widespread now, both in the United States and Canada.

PROF. McWHINNEY: Quebec has a number.

MR. MAGONE: It would probably be ultra vires once you pass this Bill of Rights in Ontario.

DEAN LEDERMAN: The ground cover to this is rather different.

MR. MAGONE: I don't know. It says in Section 2 of the Bill of Rights "... unless it is expressly declared by an Act of the Parliament of Canada". That can be by an Act of the Legislature of Ontario:-

"--- that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights ...."

set out in Section 1.



Section 1 is the right of an individual to the liberty and enjoyment of his property.

DEAN LEDERMAN: That is 1(a).

MR. MAGONE: Well, he can enjoy his property under the Ontario statute.

DEAN LEDERMAN: One of the opening sections of the Bill too, which I didn't quote there, says that Part I applies only to laws within the legislative power of the federal Parliament of Canada.

MR. MAGONE: I say, if this were enacted as a law in Ontario.

PROF. McWHINNEY: You will find this issue debated at length in a special issue of the Canadian Bar Review of 1960, and one could add to the authority of Andy Brewin the present Mr. Justice Laskin. He took the position very categorically that unless it were entrenched it would be useless. I must say that in terms of the lower judiciary this proved to be the case, in spite of the provisions in Section 2.

B.C. are the worst offenders. You get them as low as magistrates and higher up, when somebody quoted them Section 2 of the Diefenbaker Bill and the later statutes, they simply say that the later statutes override the earlier; this is simply common law and you are getting away with it. There were



a whole series of decisions in which this was ignored.

The academic legal profession bears a heavy responsibility for this failure, because I think the case you have just quoted should have been more strongly defended in 1960. I think you and I were the only two to make the point at the time.

DEAN LEDERMAN: The point that Dr. Creighton raised, which I answered, I think if you specially entrench it you do not change the text.

PROF. McWHINNEY: You only change the psychology.

DEAN LEDERMAN: And it should not make any difference. Whether it would or not we would never know, unless and until it were specially entrenched, and then we watch what they did. You just don't know what it would do.

The academic professors, academic writers (perhaps not for me to discredit them: I am one of them) who predicted that it would be more effective if it were specially entrenched, in other words it would get the forthright interpretation, they just cannot prove it and it is pure speculation and the evidence from the United States is to the contrary.



MR. MAGONE: I think the only question is, should the Bill of Rights be adopted by all governments in Canada. We were for a while, while you were out, on a discussion whether it should be entrenched or not, which is another point entirely.

PROF. McWHINNEY: Surely that is not separate. The issue is raised, and how is it adopted?

MR. MAGONE: But are you going to ask the Imperial Parliament for amendment, is that the idea?

PROF. McWHINNEY: Mr. Pearson has not mentioned, committed himself whether it is entrenched or otherwise.'

MR. MAGONE: The Parliament of Canada has spoken.

PROF. McWHINNEY: In 1960.

MR. MAGONE: Well, yes, in 1960.

DEAN LEDERMAN: I think the expression in Hansard was simply to the effect that Mr. Pearson - that the provinces repeat the federal procedure and each have an ordinary provincial statute. He was not proposing special entrenchment.

PROF. McWHINNEY: I don't think the Justice Department regards themselves as so limited. This is one of the studies of the Goldenberg Commission: how to get a Bill of



Rights, what form and what procedure and so on. This is one of the four studies listed as going to be made by the Goldenberg Commission.

If it were just a repetition of the Diefenbaker Bill, there is hardly any problem other than political.

DEAN LEDERMAN: The request I was working on in preparing this note, was simply to comment on Mr. Pearson's proposal.. Of course in discussing his proposal, this issue of the special entrenchment will come up, but he has not proposed it up to this point.

THE CHAIRMAN: What did you say the four studies of the Goldenberg Commission were?

PROF. McWHINNEY: Mr. Trudeau made a public announcement last week. One was the Bill of Rights; another was international affairs, the foreign affairs power as exercised by provinces or purported to be exercised. The third was off-shore oil. The fourth was (again a very current problem), I think it was the reform of the Supreme Court, structure and jurisdiction of the Supreme Court. So these are the four. Two of them, I gather, have already been studied in part on an informal, contractual basis by individuals for the federal government, that is to say, off-shore



oil and foreign affairs power, but the two remaining ones are the Bill of Rights and the Supreme Court.

PROF. MEISEL: Perhaps you could sell them our own report.

PROF. McWHINNEY: As I said earlier this morning, I got the impression they might buy it.

DEAN LEDERMAN: Within these four walls, isn't what Mr. Pearson is doing here mainly up-staging Mr. Diefenbaker? Is there much more to it than that? I don't know.

PROF. FOX: I think he is up-staging Mr. Robarts.

PROF. McWHINNEY: Is this a red herring to get them off discussing human rights?

DEAN LEDERMAN: You try to look at it on its merits, and I think you come up with the conclusion (I think you do) that I came up with, that it doesn't matter very much on its merits, but there is a political significance to it which I wasn't attempting to assess but which I think I can see.

PROF. McWHINNEY: It is politically popular in a simplistic sense. It looks like legal activism, but doesn't touch any of the fundamental problems of federalism to-day; and then you get into the issue of



what the Court does with it; it brings in the reform of the Court, and presumably the bicultural issue has different meaning in terms of the provinces, but this new definition you make of the Pearson proposals is excluded.

DEAN LEDERMAN: I presume Mr. Robarts goes to this conference and he has to play the game, no matter what he thinks about motivation, and he has to talk about things on its merits even though he may not think it is put on its merits very seriously.

PROF. MEISEL: One point I think we should draw to his attention (and one does not want to score points in this) but it seems to me natural to mention about Mr. Justice McRuer's inquiries being relevant; that if it is inappropriate for Ontario to talk about confederation before the federal government has completed all its studies, is it appropriate for the federal government to talk civil rights to the provinces or Bill of Rights when the government of Ontario has an inquiry going on too?

PROF. FOX: The alternative would be for Mr. Robarts to speak first as the Prime Minister of the senior province and read Bill's paper slowly, and that would take about an hour and a quarter.



DEAN LEDERMAN: The total space read slowly would not last that long.

MR. GATHERCOLE: There is nothing, Mr. Chairman, in this, or I don't believe Dean Lederman makes reference to it: that one of the cherished rights that certainly President Kennedy made so much of was the right to employment and the right to choose. I don't know whether this has any bearing. I can see all the terms, one of which you mention in here and there are others, but that would seem to me to be one of the most treasured possessions of the individual freedom, that is, to choose an occupation.

PROF. MEISEL: Except who can guarantee that?

MR. PERRY: What bothers me about Bill's approach, I don't think there is any greater enemy to good law than bad and incorrect law that is already on the statutes, and people will for ever be saying "We have a Bill of Rights. We don't need anything better than we have". I think Bill has demonstrated this is not a good statute in itself.

DEAN LEDERMAN: I didn't mean exactly to convey that. It is a respectable statute.

MR. PERRY: I must say I can see it, even as a non-lawyer; I can see it does



not do things I would like to see in it.

DEAN LEDERMAN: As far as it goes it is respectable, and I have defended it in the earlier article to which I refer, as something worth doing even at the federal level as ordinary statutes, but in the context of confederation problems to-day this is the respect in which I say it does not mean very much.

MR. PERRY: I am just wondering whether you are safe in saying no harm will be done; that if this does become embedded in the system perhaps it will be all that we will ever have.

DEAN LEDERMAN: I think it might do harm if it were to raise false expectations that something big was accomplished, because nothing really big will have been accomplished if this happens.

PROF. BRADY: The discussion is obviously intended to serve a political end, and I don't think the legal arms thought very much of it.

THE CHAIRMAN: I think Dean Lederman's paper is very succinct and very useful; and I think the point is in Kingston we should well put the question to the federal people what they say is the function of this and the value of it and the future of it.



I think, incidentally, the Premier won't be coming to-day. As I mentioned, he has seen Lederman's paper. I think the agenda for July 5th having been shortened to an hour and a quarter has reduced some of the sense of urgency about it.

I wonder if you would like to go on to the next point which is presently lively and interesting:-

"Should the provinces have an independent role to play in international relations?"

PROF. FOX: Am I correct on this to assume from reading despatches in the press that related what Mr. Robarts had said in reply to questions in the Legislature, that Mr. Robarts now tends to put less emphasis on the significance of Ontario's contractual obligations with other jurisdictions than he has on some occasions in the past in discussing this? This is my interpretation.

THE CHAIRMAN: Was there something in the press to-day?

MR. STEVENSON: The answer was given yesterday.

THE CHAIRMAN: The answer was given yesterday in the House.

MR. MACONE: I didn't get that from it.

PROF. McWHINNEY: What did he say in



the answer?

THE CHAIRMAN: The answer was rather lengthy, I must say.

DEAN LEDERMAN: This is the question Mr. Nixon was asking?

THE CHAIRMAN: Yes.

MR. STEVENSON: Essentially the answer was, first, a reference to the two papers in the Advisory Committee with the cases, and then specifically to the appendix of Delisle's report which referred to exactly what Mr. Nixon was asking; the actual relationships being carried out by individual government departments and in foreign countries; then, a few paragraphs later on, taking in in essence the general type of relationships which were carried out by Ontario Government departments and agencies.

It is all material that has actually been seen by this Committee already.

THE CHAIRMAN: Our secretariat did a good deal of work in preparing material here, and I know that Mr. Robarts gave a good deal of attention to the answer himself.

Ray, you were involved in this, the answer on the foreign -----

MR. FARRELL: Pretty well the form we sent.

PROF. McWHINNEY: Is there a short



answer given there than you can read us, or is it a long summary?

PROF. FOX: Could I raise this paragraph, Mr. Chairman, in answer to Professor McWhinney. This is the one I have been stressing. He said:-

"In the case where formal arrangement  
"was necessary, enabling legislation  
"was passed by the federal government".

PROF. McWHINNEY: That is only true in one case at least, and that does not affect Ontario.

MR. MAGONE: Was there not reference later on to building bridges, international bridges?

PROF. FOX: The way it is put here you couldn't tell.

THE CHAIRMAN: I think it is the press report that is at fault.

DEAN LEDERMAN: Press reporter leaving things out, but the general conclusion, as I recall it, that emerged from those studies we had done a year ago, and we had them done precisely because we thought sooner or later someone would be asking this question.

The general conclusion that emerged was that the Ontario Government and its agencies had been pretty careful about getting



the federal authority if it were clearly doing something like building international bridges; but there was, of course, what was called "mirror reciprocity" - "We will recognize your driving licences if you will recognize ours", this kind of thing going on; but, as Ted said, that doesn't rise to the level of generating international law consequences.

MR.MAGONE: The "honeymoon bridge" still stands across the Niagara River, that Mitch Hepburn built without authority from the federal government, and there isn't any yet.

THE CHAIRMAN: Even though the honeymoon is long over.

MR. MAGONE: They are still collecting tolls.

This question about the provinces' part in international relations was one of the things that was skated around very carefully in all the conferences that I attended, and that Professor Brady attended; and I don't know it was ever really mentioned, but the fact is that the federal government will certainly have to have power to enter into international treaties. However, I would think that in relation to those subjects that come within provincial jurisdiction, that they should communicate with the provinces before entering



into treaties that involve provincial legislative subjects.

PROF..FOX: The question is put a little differently here; it is the other way: "Should the provinces have an independent role in matters within their jurisdiction?"

MR.MAGONE: I think we have answered that already certainly in one of the reports of the Committee, that it is the federal government that is the only international entity of Canada.

DEAN LEDERMAN: It is Bora Laskin that takes that position quite strongly, isn't it?

MR. MAGONE: I think we all agree with it.

THE CHAIRMAN: Your paper did not quite come down on that.

PROF. McWHINNEY: No, I made a distinction between state and international sovereign status, and it is clear the federal government is the only body concerned with what I prefer to call inter-national or trans-national arrangements.

I have no doubt the very large sphere of operation of the provinces on a trans-national basis really raise no international law issues at all.

For example, one arrangement that in



a technical sense would raise international relations in the classical sense but in practice might not, would be, for example, commercial dealings between Ontario Hydro and a government-owned company, for example, in Eastern Europe, I would normally think, if we had diplomatic relations with the country, the matter involving foreign affairs power, but an ordinary commercial arrangement that happens to be of governmental quality only because the country you are dealing with happens to nationalise all property.

So my position was that the distinction was really in terms of international law status, and in consequence the federal government had the sole competence in matters involving international law status and consequences; but outside of this the provinces have a considerable area where they could operate; and the evidence was, of course, that they had done just that on a perfectly sensible and reasonable basis in the past - as evidenced by Mr. Delisle's massive detailed studies.

DEAN LEDERMAN: There is a fair amount of parallel legislation.

PROF. McWHINNEY: Yes, fair amount of commercial contracts.

DEAN LEDERMAN: As if between private



individuals or corporations in different countries.

PROF. McWHINNEY: Yes.

DEAN LEDERMAN: Even if a Crown corporation is in the picture on one side, this, this doesn't make it a treaty.

MR. MAGONE: I felt we dealt with this whole subject, and I must say I read this as meaning only matters that had to end in a treaty between two sovereign states. I thought we had disposed of the other point.

DEAN LEDERMAN: This is full-fledged international law that generates international law consequences; the deal has no ----

PROF. McWHINNEY: Very few things require treaties; that is one of the fascinating things that you can get along very well without the treaty.

I think the emphasis is put on the international law consequences. The province cannot go into relations that are juridically binding in international law on its own authority.

MR. STEVENSON: At this meeting I attended a week or so ago, where there were some Yugo-slavians and Americans as well as Canadians discussing some problems of federalism, this question of international relations



of federal units came up, and a paper given by the Yugoslav people first just said very flatly: "There is only one international personality to our federal state. Otherwise how could you possibly conduct treaties and all the rest of it?"

PROF. McWHINNEY: Which constitution was he speaking of, the 1963 one?

MR. STEVENSON: This is the latest.

PROF. McWHINNEY: Or the new 1967 gloss on it? They are changing it, particularly in cultural matters. . I rather think they are going to come around to the Quebec point of view.

MR. STEVENSON: They certainly didn't last week, but it was rather funny to find out --

PROF. McWHINNEY: Who was leading from Yugo-slavia?

MR. STEVENSON: Jouan Djordjevic.

PROF. McWHINNEY: That is from the horse's mouth.

MR. STEVENSON: After the discussion got going and one saw what Canadian provinces did in a regular day-to-day sense of relationships, it soon turned out that the republics there have almost exactly the same kind of working relationship as Canadian provinces; and even going to the extent that a number of the people from other parts of Yugoslavia



had no idea at all of the extent to which a number of the republics were dealing with neighbouring countries in a non-treaty sense but in matters which almost involved international legal obligations.

PROF. McWHINNEY: I would like to ask Djordjevic really the question Mr. Delisle asked our department. I am quite sure you will find the Macedonian and ----

MR. STEVENSON: Much the same. They had to work with Bulgaria on border lakes hydro.

PROF. McWHINNEY: It is clear in this generalization that he had not been doing the studies that Mr. Delisle did for us.

PROF. FOX: Maybe we should give him a subscription to our proceedings.

PROF. McWHINNEY: Make him an honorary member of the educational -----

THE CHAIRMAN: I am wondering how far we will get on our agenda at Kingston when I realize how we have consumed about the same amount of time to-day already that we will have for the whole first day down there.

PROF. FOX: Could I suggest, just for the consideration of the group, that we maybe jump over some of the topics which we have been over several times, and go to one that interest me particularly because Dick Dillon



is here and I don't think we have given it a great deal of attention, and this is item (i) - national centre for science and technology?

PROF. MEISEL: Hear, hear.

PROF. FOX: It seems to me to be an important one. I would be interested in discussing it if the others were.

PROF. McWHINNEY: Even (j).

PROF. FOX: (i) or (j), both of them, yes.

THE CHAIRMAN: I have no doubt it will expedite matters if we can skip over (e), (f), (g) and (h)!

PROF. McWHINNEY: And (k) too.

PROF. FOX: We have spent little time on that in the past.

THE CHAIRMAN: No, I think this is rather a good idea.

Well, Dick, you have been an advocate of this. I suppose the question boils down to the advantages of a national science centre over one elsewhere or several elsewhere.

DEAN DILLON: Well, Mr. Chairman, I don't think it is a matter so much of the advantages and disadvantages of a centre of this nature; it is as to whether or not it is a practical situation having regard to the feeling that each of the provinces must have



in their strongly developed provincial system of education.

I am convinced that the centres of this kind are the only thing from the national point of view that make sense. When you just consider the relative amount of resources we have compared to the Americans, let us say, we simply cannot compete except if we are willing to pool our resources for one good centre instead of four or five mediocre ones. We not only have to be willing to co-operate in this way, but I think we have to go one step further and that is to decide exactly what areas we can afford to be active in. We cannot compete in all fields. It appears again as another argument for the national approach.

PROF. FOX: Could I ask Dean Dillon what it is we are really talking about? Are we thinking of a beefed-up N.R.C. (whose function I am not too sure of) or are we talking about a national university for science, a teaching institution? What is it we are thinking about here?

DEAN DILLON: I think we start with the idea of a centre of excellence.

PROF. FOX: Research, scientific research?

DEAN DILLON: Scientific research if you like.



PROF. FOX: And teaching?

DEAN DILLON: Could be teaching.

I think it is the research that is of greatest concern, and the need in Canada to-day is not so much for centres of excellence in basic or pure research so much as in the more applied kind of research.

You can just sum it up that we have only got so many resources, and these are in total, relatively speaking, small in comparison to the United States and Great Britain, Japan; so we have to co-ordinate our efforts and we have to choose what fields we are going to be involved in.

DEAN LEDERMAN: It is an elaborated N.R.C. then; this does fit that description?

DEAN DILLON: N.R.C., I think is a centre of excellence in a very real sense, but the concern or the complaint has been made that it is concerned too much with fundamental basic research which really is very marked. The physicist, for instance, makes a new discovery or breakthrough, and this is common knowledge throughout the scientific world in very short order; but what we lack is a development in the more applied sense, and here proprietary interests, national interests, are at stake, and we simply haven't got down to this.



PROF. MEISEL: Mr. Chairman, one of the things that crossed my mind in thinking about this kind of problem, both in relation to this thing and related ones, is that if our present constitutional arrangements<sup>m</sup> and the political climate preclude the vigorous development of a national centre and if the alternative is the sort of atomized, piecemeal, rather inefficient and probably fruitless or essentially fruitless effort on the part of ten or eight provinces, should we think of alternative ways of doing this?

In some areas now in the social sciences a number of universities from different states in the United States, or even different countries, have established, what they usually call, consortia of one kind or another, where people get together from different centres and create a common base in which certain kinds of activities are carried out.

Is it ridiculous to think in terms of the eleven governments perhaps jointly, or a group of governments jointly in Canada planning certain kinds of scientific activity on that basis, so that you would have the federal government plus provincial governments, or just the group of provincial governments either with or without the federal government,



developing certain kinds of scientific inquiry and application of this inquiry to problems that mattered to them?

DEAN DILLON: I think much can be done by this co-operative effort, and it can be done perhaps in rather - in other words, the centre of excellence could be something which is not in the geographic sense. This has been practised amongst groups of American universities quite successfully.

PROF. MEISEL: One advantage of this seems to me to be that we ought to search continuously for, sort of, incentives which combine Canadians of different regions, of different languages together for very selfish reasons. I think in some sense obviously, if some of the cohesive forces have been weakened recently, we should try to provide new ones that make it worthwhile to try to draw together and become dependent on one another and benefit from this dependence. This looks to me like very much the kind of place where this ought to be attempted. I think there are others but this is a new thing that we ought to perhaps try to launch, and I can't think of a better place than this Kingston conference where one could start talking about it.



DEAN LEDERMAN: I don't see any particular legal constitutional problem in it either. If the federal government or any provincial government wants to spend its money this way on any one Crown corporation, they can do it; there is nothing in the way. The problems are political.

MR. PERRY: What does this mean in terms of whatever the federal policy is? My impression is that they have been dispersing scientific research by establishing units of various universities throughout the country. This might even mean a reversal of whatever federal policy there is at the moment in this area.

DEAN DILLON: I think the federal government a year ago, was it, when they decided that the support would go directly to the provinces rather than through the Association of Universities, and that this step further strengthened the provincial Department of Education or University Affairs or whatever they happened to be.

DEAN LEDERMAN: At the same time, didn't they give a lot more money both to the Canadian Council and the N.R.C. so that those bodies could step up their contact with individual professors?

DEAN DILLON: That is right.



DEAN LEDERMAN: The institutional aid in the form of government grants was handed over to the provinces.

DEAN DILLON: Whether or not to have research going, you have to have buildings.

MR. PERRY: This is what I was thinking. A number of laboratories and other facilities built by the federal government around the universities of this country suggests a dispersing policy - and I may not even be right on my facts there.

PROF. MEISEL: It depends a lot on what it is. Dick would know much better than I would. It seems to me you cannot generalize about this kind of problem, certainly in relation to, say, the Department of Agriculture being concerned with wheat. It makes a lot of sense to build something at the University of Saskatchewan and maybe one other place, but you don't need the colossal sort of research establishment as for, say, the production of nuclear reaction or shooting at Venus. Maybe all you want is one national effort which draws on the resources of the people right across the country.

Probably one ought to tackle this by using the nature of the problems as the criterion, rather than the political or economic aspects.



MR. PERRY: I have been making my statements a little bit with tongue in cheek, because I know there are people in Ottawa who have this as one of their ambitions in life, that is, to disperse research and to get as much of it back into universities as possible.

THE CHAIRMAN: What is their objective, Harvey?

MR. PERRY: I frankly don't know. I think it is just that they have been a little bit conscious of a brain drain to Ottawa, to government generally, and they want to reverse the trend, if they can, by putting facilities on to the university campuses.

DEAN DILLON: I think there are two topics that might be discussed in Kingston and about which I know relatively little.. First is the Science Council and the Secretariat, and this is a relatively new national body that is supposed to be forming a science policy for Canada. One of the members of this will be present - Deutsch. He could, I am sure, discuss the terms of reference, which are relatively simple and straightforward but, more importantly, I think he could give us an idea of what progress has been made. I know they are very active and busy at the moment, and perhaps he could fill us in on that score.



The second thing, about which I know even less, is the National Education Office. I believe that Mr. Davis has taken a leading part in this, and this perhaps could be a most important development of education in the national sense. Apart from a little bit of publicity that came out about six or eight months ago, I have seen nothing else.

THE CHAIRMAN: Mr. McCarthy could tell us more about that, Deputy Minister of Education. We don't know whether he will be there or not.

DEAN DILLON: The National Education Office, I believe, this is a group of the provincial ministers of education, isn't it?

THE CHAIRMAN: Yes.

DEAN DILLON: There is a little sort of secretariat.

THE CHAIRMAN: Yes, secretariat or agency on their behalf.

PROF. FOX: Robin Ross, who is Registrar at the University of Toronto, has been absent on leave for a year organizing this. I saw him briefly at Ottawa, asked how it was coming, and he said "It's coming".

THE CHAIRMAN: Excuse me, Paul. Are you sure he was involved in this?

PROF. FOX: Isn't this the National Education Office?



THE CHAIRMAN: He was in the office of the Secretary of State as educational adviser to the federal government.

PROF. FOX: But isn't this what he was working on?

THE CHAIRMAN: I wouldn't think so. Do you know, Tom?

PROF. SYMONS: I don't think this is his primary job.

THE CHAIRMAN: Because, you see, the federal government is not involved in this thing.

PROF. FOX: I'm sorry.

THE CHAIRMAN: This is purely inter-provincial.

PROF. FOX: I'm sorry.

PROF. MEISEL: I don't know whether this is introducing a red herring, but when we talk about the Science Council and the Science Secretariat, we might also ask something about the relation between social sciences. Is no active consideration being given to the setting-up of a federal social science research council and make it part of this? I may have vested interests in this, but I think it is just the same as the other in the long run.

DEAN DILLON: Going back to the question, I think that if the question is:



"Do you think a national centre should be set up?", I would assume this is the geographic centre. I think there are many questions to be resolved before you say you need this or not, whether it should be geographic or whether this could be better done by a series of consortia, as you were saying, at the universities as they exist, no government laboratories.

I think the important thing is that we make the best use of our limited resources. I think it has been proven, and certainly to my satisfaction, beyond doubt that if we make up our minds to do a job in Canada we can do it, that we can do an excellent job indeed, but there is a tendency for us, I think to --- we are just spread too thin.

PROF. CONWAY: Mr. Chairman, could I ask Dean Dillon just wherein the resources are limited? Is it talent, is it private endowment, public endowment?

DEAN DILLON: Just money.

PROF. CONWAY: Compared to England, I would like to find out how we stand.

DEAN DILLON: A rough yardstick is perhaps expenditure on science and research and development as a percentage of gross national product. In Canada we are under one per cent; in the United States it is over three;



Great Britain is about the same. Sweden, Great Britain and the United States are not far apart.

Then if you deduct the military expenditures, the United States and these other countries are still way ahead.

PROF. CONWAY: Are we so far down?

THE CHAIRMAN: We borrow it.

MR. PERRY: Don't have enough Dean Dillons.

THE CHAIRMAN: We borrow it from the U.S.

DEAN DILLON: We import a lot of technology for one thing. About ten times as much money is required for applied research as basic, and we have been concentrating on basic research because it is cheaper.

Secondly, there is not the potential to do research in Canadian industry because so much of it is subsidiary to American industry, so that General Motors in Canada, for instance, doesn't do one bit of research there.

PROF. CONWAY: Then it is not because resources are limited in themselves, but because we allocate a smaller percentage to scientific research for one reason or another. It is not that we are short of money; it is because we don't choose to spend it.

DEAN DILLON: I think there is no simple



answer to this question. We don't spend as much; our markets are not as great.

PROF. CONWAY: Sweden for one, three per cent.

DEAN DILLON: Sweden is now the second richest nation in the world. They have replaced Canada in this respect in the last three years.

PROF. CONWAY: What is the population?

THE CHAIRMAN: About the same as Ontario, seven or eight million.

DEAN DILLON: But they have got a strong central government and they have a strong national science policy, which we haven't had.

PROF. CONWAY: Do you think there is anything analagous - I am thinking in terms of Caltech or Berkeley. Has the country a supported/basically first-class teaching university with the three per cent of the G.N.P.?

DEAN DILLON: John Chapman, who has been one of the proponents on the Defence Research Board, claims that Canada could support two of these M.I.T.'s, one in Eastern Canada and one in Western Canada. I don't know.

I get back to this, that I think we should perhaps spend more of our resources on research and development work, and that



we should, as a matter of policy, make sure that a certain percentage of that effort is going into developing excellence.

PROF. CONWAY: I agree with you so much about excellence for the sciences, and how would you say you get that, by a research and teaching university like Caltech or by the aggregation of research scientists with government supported lab? Which would you rather have?

DEAN DILLON: I think teaching is pretty basic.

PROF. CREIGHTON: I would like to ask Dean Dillion - he mentioned the case of General Motors as an illustration of the ubiquitous phenomena - the subsidiary industry. Surely a great deal of the kind of research that he wants is not pure research but applied research, and I am asking the question whether a very large percentage of this is not in fact done by industrial enterprises and commercial corporations; and that unless those people do do this kind of research, it will have relatively little practical application; and what we will in fact be doing, if we can create these two big research and teaching institutions at one end of the country and the other, would in fact be providing more trained scientists in the practical nature to go down



to the United States.

DEAN DILLON: I think the answer to that is that if we created this centre (it could be created tomorrow) it would not solve the problem. I think we have to have the potential in industry. In other words, we have to raise the level of technology in Canada, and this is to raise the competence of industry, the ability of industry to use these people.

PROF. CREIGHTON: How much of that three per cent of the G.N.P. in the United States is contributed by industrial, commercial corporations in research, applied research?

DEAN DILLON: I couldn't say precisely, but it takes ten times as much to do the applied research as it does the basic.

PROF. CREIGHTON: Surely a very large proportion would be done by ---

DEAN DILLON: Very large proportion indeed is done in the United States in industry, but a lot of it is supported by government.

PROF. FOX: Isn't this true of the university research? I was astonished the other day to discover, I think, 85 per cent of Berkeley's information was from government-financed projects, a colossal proportion for the total of the university.



PROF. McWHINNEY: Dick, would you anticipate national centres would develop like M.I.T. certainly has: they would have social science departments for integrated social science studies at some stage? Would you envisage that sort of thing developing at all?

DEAN DILLON: I don't think any sort of centre of the scale of M.I.T. or Berkeley, or at least Caltech, can exist without social sciences. We have got far beyond that point now. The two cannot exist separately.

PROF. McWHINNEY: Let us examine another specific question, which has been in all the Montreal papers since Mr. Pearson's speech last week: how to get rid of Expo when it is closed. Would you envisage the island, or two islands, a happy location for one of these two centres? If so, you have Mr. Pearson committed morally and verbally to supporting the darned thing. I suppose one could flourish in Montreal.

DEAN DILLON: I think Quebec, if there were two, I think one of them would have to be somewhere there.

PROF. McWHINNEY: This almost means Toronto and Montreal then.

PROF. MEISEL: Not necessarily.

PROF. CONWAY: Why leave out Vancouver?



A MEMBER: You leave one of the most populous provinces without a centre.

-----Short recess.

THE CHAIRMAN: Can we resume, please? I don't know what your wishes are for the balance of the afternoon. I might say, first of all, it is a warm day, and I think you are going to find just how warm it is when you leave the relative cool of this room and step outside.

We have been over many times, I think, most of the things in the economic section. I don't think any of them is new to our discussions.

There is one matter I wanted to review briefly, the studies of our sub-committees - and some work has been going on in some of them - before we conclude this our last meeting before September.

MR. PERRY: If I may just interrupt, what is the stage of this agenda now? Has it been seen and approved by the federal people, or is it still something we are just putting forward?

MR. BEER: This agenda, as it says at the bottom, is intended only as a guide. It has been sent out to-day to all the people who will be coming, with a notation that everyone is free to add other questions;



that these don't have to be all answered, and it is purely a guide to the discussion; that the chairmen are not necessarily bound to it in any way, although it seemed to cover a fair number of questions of interest.

THE CHAIRMAN: Of these matters that remain, I think one question, (j), might be worth taking a look at, because this too is topical.

DEAN DILLON: Just before we leave (1), would it be possible to get someone to report on this National Education Office, the progress being made and so on, and whether it is still active?

THE CHAIRMAN: Yes, I think we had better, Don, if Mr. McCarthy is not going to be there himself, we might ask if they could send us some report or review of the present state of affairs and what is involved, and who is involved and why. We could introduce that at the beginning of this discussion session.

Now, the educational radio and television has been quite an interesting and lively issue, I suppose dramatized recently by the satellite or Telstar issue, whatever it is.

PROF. BRADY: Is Ontario interested in this, I mean the Ontario Government?

THE CHAIRMAN: Yes. Frankly, I wish



I knew more about the facts in this area. I know last autumn Mr. Davis appeared before the Board of Broadcast Governors, and I think their plans are well along. I am not certain what the problems are.

PROF. MEISEL: I think the Department of Education want us channelled for education.

MR. BEER: Mr. Chairman, we have in the office the brief that the Minister of Education presented. It might be possible to have copies of that made and sent out to the members in time for the Kingston meeting.

PROF. McWHINNEY: Presented to whom, to the Board of Broadcast Governors?

MR. STEVENSON: Right.

THE CHAIRMAN: Do you have any information on the status of this development, Ray?

MR. FARRELL: No.

PROF. McWHINNEY: Is it known what the status is? Has the B.B.G. formally received the brief? Are there to be any hearings?

MR. STEVENSON: Oh, yes.

PROF. MEISEL: I can't think of a better place to discuss this. Kingston hasn't in the last twenty years had a complete C.B.C. service.

THE CHAIRMAN: Why?

PROF. MEISEL: Because there is a



private station; it is an affiliate and it filters half the things the C.B.C. carries and we don't get them.

MR. PERRY: Is this just a cultural question, or are there some legal aspects in this?

PROF. FOX: Lot of legal aspects in it.

THE CHAIRMAN: And financial.

PROF. McWHINNEY: Are the financial substantial?

THE CHAIRMAN: I don't know, Ted. I have never really looked into the financial question. I only recall the story Dr. Forsey has told us several times about the conference in Banff, and asking Quebec if they wanted to pay for the duplication of the whole thing.

DEAN LEDERMAN: I think myself that the exclusive federal jurisdiction over both radio and television is clear enough, but this doesn't ---

THE CHAIRMAN: Excuse me.. Before you go, Professor Creighton, in case anyone does leave earlier, I am presuming we would meet on the third Friday in September, which would be the 15th.

PROF. McWHINNEY: May I just ask, before we get on to that - the Confederation of Tomorrow Conference is already involved,



the Premier requesting rooms in the hotel here according to the Montreal press.. Is there a date for it?

THE CHAIRMAN: He was asked in the Legislature the other day, and reported it would be in the last part of November.

PROF. McWHINNEY: There would be evidence of unusual booking of rooms, of course, which could point to a hockey convention or anything.

PROF. SYMONS: On the question of the date for the Confederation of Tomorrow Conference, Mr. Chairman, there are major national conferences that will be occurring at the end of November that the Prime Minister might not simply have had in mind at all, and I wonder if this shouldn't be mentioned to him.

THE CHAIRMAN: What are they?

PROF. SYMONS: Well, the chief one that comes to mind (apart from the Grey Cup) is the Association of Universities and Colleges of Canada.

THE CHAIRMAN: There aren't many Premiers there, are there?

PROF. SYMONS: No, but there are quite a few educators.

THE CHAIRMAN: Yes. When is that, Tom? Do you know exactly?

PROF. SYMONS: No, the exact date has



not been set, but it will be in the twenties of November in Montreal.

THE CHAIRMAN: We will take note of this then, thank you. I am sorry, Bill: I think I interrupted you.

DEAN LEDERMAN: I was just going to say that I think the federal jurisdiction over radio and television is clear enough constitutionally, but this does not preclude the federal authorities from giving a channel to a provincial Crown corporation, giving permission to a provincial department or Crown corporation to proceed and broadcast, and to select the material that it is going to broadcast and cut out things it does not want to broadcast, the way any owner of a television station does.

Off hand, and maybe I am over-simplifying the thing, it seems to me that there is a simple solution. You simply provide the channel for these purposes to a provincial government department or corporation, and let them proceed like any other station owner. This does not give away jurisdiction, but it gives the province a lot of leeway to do what it wants to do, simply as an owner of a channel and facilities.

PROF. McWHINNEY: Suppose you are unreasonable, and it is understood in Quebec



the federal government has decided under no circumstances will it give Quebec government a channel for educational or other purposes: then you get a hostile confrontation.

The Quebec argument is that there is no such thing as complete, exclusive, plenary jurisdiction in this area, and when you get into education you could in some circumstances reach radio and television if the purposes were educational.

The simple case is whether, for example, Quebec could buy facilities from the French satellite and simply control them, for example, to provide commercial television outlets in Quebec, on condition that they use them for educational purposes. I don't think you would be quite so categorical there in denying possible power to do this, would you?

DEAN LEDERMAN: I should think branching things off international satellite is, a fortiori, in federal jurisdiction, all the more clearly federal jurisdiction.

PROF. McWHINNEY: Of a French satellite orbiting around Canada?

MR. PERRY: Over Quebec.

PROF. McWHINNEY: Why is it different than if it were Bell Telephone orbiting its own private commercial satellite and selling



to Quebec television stations?

DEAN LEDERMAN: It is not even national communications; it is international communications. It is just a fortiori federal jurisdiction.

MR. MAGONE: I suppose for practical purposes the federal people would not have to assign a channel to the province; but once having assigned it, I doubt that they would have very much jurisdiction over what went over it.

PROF. McWHINNEY: Your prior question  
at  
is the real one that/the moment it has been  
hinted very strongly that it will do everything  
in its power to see provincial governments will  
not get a channel.

MR. MAGONE: Perhaps for that reason,  
because, after all, the provinces are not  
bound by this statute; there is nothing in the  
statute saying the Crown is bound, and if the  
Crown is not bound, well, of course, they  
don't have to assign them a channel; but if  
you have done, of course they could jam the  
channel but that is about it.

PROF. McWHINNEY: If they refused  
to grant the channel, then you get the situation  
that if your Education Minister says you want  
it, you either have to go ahead and they sue



you or you sue them, if you are dealing with unco-operative federalism in this area, because there is certain evidence it may come to that.

DEAN LEDERMAN: If the provincial government were authorized to tackle broadcasting, the Board of Broadcast Governors could impose regulations on them like any other broadcasting; they could require sixty per cent Canadian content, I suppose, or what have you.

PROF. McWHINNEY: Within their competence clearly they could regulate, but supposing they do not grant the channel, is it then entitled to withhold it?

DEAN LEDERMAN: Yes.

PROF. McWHINNEY: That is where the fight starts.

DEAN LEDERMAN: I wouldn't know which side of that fight I would be on as a matter of constitutional opinion.

MR. MAGONE: The B.B.C. has been declared to be a Crown corporation and not subject to the Lord's Day Act. By the same token, a Crown corporation established by the Province of Ontario was a Crown corporation and is not bound ---

DEAN LEDERMAN: But a federal statute can be so phrased that it would apply.

PROF. McWHINNEY: If Quebec is refused



a channel, you could hardly grant one to Ontario, so Ontario may be in the same position: that if Mr. Davis decides he needs a channel and we are going to get unco-operative federalism on the part of the federal government, he may have to, as legal adviser, give the advice "We will make a case and go ahead anyway".

Co-operative federalism as long as it works is fine, but if somebody says "We don't like your nationalism", which is what Mr. Marchand said to Mr. Johnson, that is when you come to the Courts and bring your reference.

DEAN LEDERMAN: If we are going to bargain about who can do what, there is a very simple solution, if the federal authority will be reasonable, whereby the province can be provided with what they want in this field of broadcasting without giving them a monopoly on any particular type of broadcast. There is nothing to prevent the federal Parliament running an educational T.V. station if they want to.

PROF. McWHINNEY: They won't run it in French, that is one of the problems, using the French one, using de Gaulle's thing. Quebec says there is no federal policy, first of all, on the issue of a Canadian satellite, and we rely on the fact that we can speak



English and we can always use the American ones, but that does not help Quebec.

I will take the opposite viewpoint to help our bargaining position, if we have to get into this, to say that you could make a very respectable case that the provinces have competence in this area so long as the purpose is fundamentally educational, and there is nothing in the cases excluding such a position of concurrency of power, and the power exists in the province if the purpose is fundamentally educational.

PROF. MEISEL: If the purpose is to educate people to smoke cigarettes by television advertising, who defines what is educational?

PROF. McWHINNEY: This is the same answer we gave Harvey's question earlier in the afternoon; it is a fact-oriented decision, and you have obviously reached a colourable situation where ----

DEAN LEDERMAN: You cannot even assign the a channel without/federal authority doing it, because it is a matter of international agreement, very tight agreement.

PROF. McWHINNEY: Not at the moment.

DEAN DILLON: There is no screen along the international border, so when you



assign channels people in Ohio and New York State are going to be very interested in this too.

PROF. BRADY: I didn't see this account. What did Mr. Davis ask for?

PROF. FOX: I think actually, going on memory, it is really more than a channel; it is a provincial T.V. network with different channels in different localities; so it is a much more substantial problem than just ----

THE CHAIRMAN: It is a self-contained system really.

PROF. FOX: The second point that might be related, the experience the federal government had with Alberta when Alberta wanted a radio station which the federal government said was going to be used for provincial propaganda and Aberhardt said was going to be used for religious proceedings, and the federal government couldn't see much difference. That provoked a lot of controversy, and I think the memory of that has died rather hard in Ottawa.

THE CHAIRMAN: I was going to ask how would one distinguish between whether -- presumably one government is no more prone to this than another, are they, or is this to have been a ----



PROF. FOX: It is the old question of who was there first, like the split in education.

THE CHAIRMAN: I mean, one keeps hearing this type of insinuation about the C.B.C.

PROF. FOX: It is propaganda if the other guys do it.

PROF. McWHINNEY: I was going to say, I don't know what Mr. Davis had in his brief, but all the universities -- I am astounded to find the McGill University internal television network for lectures, and it is very much like Dante's Inferno to go into one of these things and you see, for example, students sitting in chairs or sprawled on the floor. It is quite intriguing, but they say it is scientific use of personnel.

DEAN DILLON: But this is closed circuit.

PROF. McWHINNEY: University of Montreal send programmes to Sherbrooke over that kind of tie-up.

DEAN DILLON: That would be done on cable.

PROF. McWHINNEY: There would be no denial in that case of provincial competence to do that in the engineering sense.

DEAN DILLON: There is nothing goes over the air; it is all transmitted on the wire.



PROF. McWHINNEY: What about when the French satellite goes over, some method of receiving the broadcast?

DEAN DILLON: This is transmission of the magnetic waves; this is what we call a channel.

PROF. McWHINNEY: Would that be broadcasting?

DEAN DILLON: This is a channel at a certain frequency, and these bands must be allocated so that there is no interference.

PROF. McWHINNEY: Must be allocated in an engineering sense as between competing satellites?

DEAN DILLON: That is correct.

PROF. McWHINNEY: But there is no international convention at the moment; it is sort of free-for-all.. Areas broadcast provides a cut-off point of what I take it in terms of educational process normally is presumably the capacity or function which is essentially the same.

DEAN DILLON: I think in the closed circuit setup there is a camera which takes a picture and the picture, in simple terms, is transmitted along a cable to screens, so there is nothing broadcast in the sense we are talking about these satellites.



This educational T.V. network that Mr. Davis is working on, here there would be broadcasting stations which would send the signals to every high school in the province. This then becomes an international thing because that frequency then cannot be used by anyone else in the area.

PROF. McWHINNEY: The obvious and sensible thing in a co-operative federalism system is to treat this as a purely ministerial function and give the permission automatically to the provincial authorities; but when you do not get that situation arising, you have to balance as a province your educational imperatives (because this is very important to you) against the argument of the power.

DEAN DILLON: There are only so many bands that can be used, say, in the Toronto area, and the ones that are allocated here affect Cleveland and all the other places.

PROF. McWHINNEY: How many are there here in Toronto area?

PROF. FOX: I don't think there are any at the moment. That is why the big controversy about Barrie.

DEAN DILLON: There are two stations here in Toronto now, but there are others in the area.



PROF. McWHINNEY: If you gave a licence to Mr. Davis for a channel, you would blot out one of the American stations automatically.

DEAN DILLON: It would simply mean no other station within range of this kind of waves, which is fifty or ~~a~~ hundred miles, could use that channel.

THE CHAIRMAN: That is what the fight has been over.

DEAN DILLON: That is what the fight is about. There are only so many that can be used in the area.

DEAN LEDERMAN: What are the possibilities of U.H.F. or V.H.F.? Doesn't this multiply -----

DEAN DILLON: This increases the number of channels.

MR. BEER: In connection with this, last Saturday I was at a meeting of the Radio and Television Association of Southern Ontario, and they have been petitioning and writing memoranda and whatnot, to get a French station in Toronto, after getting the radio the next step being television, and at this meeting a lot of these problems were raised.

I was amazed. Their confidence that there is going to be a French television station in Toronto in 1969 was amazing.



They seem to feel that this was pretty well there.

They said that the U.H.F. (everything they are talking about is under the U.H.F. system) - and these negotiations are under way, I think it is Rochester, Kitchener, Toronto, that is with respect to the V.H.F. channel; but there would have to be discussions with various stations in order to get the U.H.F. station opened up in this area; and they said it was going to be a great battle royal on the whole question, not with respect to a French station but with respect to education and whatnot. They seemed to feel it is U.H.F. bands where there are going to be possibilities for different kinds of broadcasting.

THE CHAIRMAN: I don't know if you feel we have had a sufficiently brisk work-out on this matter to put everyone in top condition for the encounter next week-end, but I think we might draw a line there.

I wanted to take a moment to call for any matters that sub-committees might wish to bring before the full Committee. In fact, as I understand it, there is only the one committee which has been active at all between our meetings, and that is the cultural committee, but there may be other matters we want to consider for pursuit during the summer.



Professor Brady, did you wish to speak for the cultural group?

PROF. BRADY: Yes, I would like to say that the cultural affairs committee had a brief meeting at luncheon. It has been discussing recently and working on the completion of a report with some recommendations on what might be appropriate policy in Ontario cultural relations. This report is in draft form now, not completed, at least not sufficiently completed to present to the Committee at the present time; it will, however, be completed, we hope, within a few weeks and will be sent to members of the Advisory Committee in the course of the summer.

We do feel, as a committee, very strongly about one matter, and that is this crucial question that is under consideration by the provincial government and that has been discussed, of course, by the Franco-Ontarian organizations, namely the question of bilingual education at the secondary school level.

I think we have discussed before in this Committee the practical situation. The Franco-Ontarians have achieved a satisfactory state of affairs in primary education, not a perfect state of affairs but a reasonably satisfactory state, under the separate school,



and they have developed bilingual schools at the primary stage; but when the pupil leaves primary school and goes on, or plans to go on to a secondary school level, he is up against difficulties of the first order. The separate school legislation, of course, does not permit public funds, tax funds, to be devoted to secondary school instruction; and consequently the Franco-Ontarians who have been enjoying the primary school bilingual mode of instruction, instruction in two languages, their parents either have to send them to private schools, which involves their payment of fees in addition to the taxes that they pay, or send them into the general public school system in which, of course, they are not enjoying the bilingual education that they want their children to enjoy.

We have studied this matter in the committee, and we are strongly of the opinion that the real solution is the establishment of bilingual secondary schools within the public system.

In our meeting at noon hour, we felt that we should present to the Advisory Committee their strong conviction on this matter, because this is the last meeting of the summer and, while we have not our report to submit to the Advisory Committee at the present, we do



wish to state what our resolution is, and we have put the resolution down within a sentence, namely:-

"That the Province of Ontario, subject  
"to a study of the practical problems  
"involved ----"

and there are practical problems:-

"--- should establish as soon as  
"possible bilingual secondary schools  
"within the public system".

Now, we hope that members of the Advisory Committee will agree with us on this. At any rate, we are unanimous on it and feel strongly about it. I think, Mr. Chairman, it is appropriate to make our views clear at this meeting.

THE CHAIRMAN: Well, what were your views about disposing of the report and your recommendation now, Professor Brady? I take it this will form subsequently part of the fuller report to the Committee here?

PROF. BRADY: Yes. The resolution I have just read really contains the most significant part of our recommendation. Now, the report gives you a background to it and explains the development of the bilingual instruction in Ontario and so on, and substantiates, as it were, or backs this resolution,



I should say, with what we think are pretty valid arguments; but the resolution itself has, I think, significance for the Committee and we felt that the Committee should have it presented to it.

THE CHAIRMAN: Did you want a discussion or reaction from the Committee?

PROF. BRADY: Yes, a reaction.

THE CHAIRMAN: Such as the Committee is.

PROF. BRADY: If it was prepared to express, for example, its support for this, well, we would be naturally gratified.

PROF. McWHINNEY: I support it.

MR. PERRY: Alec, we have discussed this in terms of the context of certain districts in the province which we have called bilingual areas. Is your resolution put forward as being limited to those areas, or it is as sweeping as it appears to be?

PROF. BRADY: That is a good question. It is significant only to those areas of the province where you have Franco-Ontarians.

MR. PERRY: This is quite an important qualification.

PROF. BRADY: Yes. The privilege of having bilingual schools at the primary level, for example, is a privilege that is enjoyed where there are sufficient Franco-Ontarians,



and where the permission of the school board and the Department of Education is obtained. These conditions would also have to be satisfied with respect to the bilingual secondary schools, but if the conditions are satisfied we think that this system ought to be established.

This is really, in other words, extending to Franco-Ontarians to secondary school level a privilege that they now enjoy under the policy of the Department of Education, which has been pursued for a generation or two, of recognizing bilingual schools at the primary level.

Bilingual schools at the primary level, of course, are separate schools, but I hardly need to explain separate schools and public schools. Strictly speaking in this province they are part and parcel of the public system of education. In fact in one place in particular, Welland, Franco-Ontarians have had public schools at the primary level that are bilingual.

Now, it is really the extension of that idea of the bilingual school that you find in Welland at the primary level into those areas where you have Franco-Ontarian people, such as Ottawa and the Eastern Townships and certain areas up in Northern Ontario - those areas, in other words, that we illustrated by the maps and so on that have substantial populations of what we speak of as Franco-Ontarians.



MR. PERRY: I could support if it is based on the understanding that I have had of the discussion that we have engaged in up to now, that we are talking about selected regions of the Province of Ontario, in effect where the same conditions apply as make primary school bilingual education possible.

PROF. BRADY. Yes, that is correct.

MR. PERRY: I think your resolution is a little broader than this.

MR. BEER: I am not quite sure if I understand what Mr. Perry is saying. He is wondering whether these schools would be kept to the areas that we were discussing under other headings, and I don't think that is true.

For example, it is understood in that that if in Toronto, where there are at the present time two bilingual primary schools and next year there will be four, this resolution would allow for a public bilingual secondary school in the City of Toronto.

In the way we were discussing bilingual aspects before, they were much more circumscribed, I think, to other areas, but I think one must look at this resolution in wider context. I think wherever it is feasible to establish a school - and this could be Sudbury, Ottawa or Windsor, where you have enough students that one would have to build



another school anyway and you have that many students who could attend a bilingual public school, then one would go ahead.

It is slightly different than the context we were discussing dealing with districts for municipal services and all that.

PROF. BRADY: It is confusing because when we were talking about bilingual districts we were talking about more than education, but we discussed before this matter of education for Franco-Ontarians - emphasized that it is already provided at the primary level where the conditions in the opinion of the Department of Education are satisfactory, in other words where you have the number of children that are bilingual, that are Franco-Ontarians, that the parents wish to be instructed in French as well as in English.

Now, it is an extension of that from primary to secondary school level in the areas where you have, of course, a sufficient number of students.

Now, if I have left out any aspects of this matter, perhaps some member of the Committee ----

PROF. FOX: I think Harvey's point is included in the statement "where appropriate



arrangements can be made" or something.

MR. PERRY: I am sorry, I missed those words. They are important qualifications.

PROF. BRADY: Perhaps I may re-read:-  
 "That the Province of Ontario, subject  
 "to a study of the practical problems  
 "involved, establish as soon as possible  
 "bilingual secondary schools within  
 "the public system".

DEAN LEDERMAN: This means where there is a significant enough number of French children in the area to make it feasible and practical as good education.

MR. PERRY: I was thinking/more of the extensive publicity that our deliberations are now receiving. If this resolution appeared without the qualifications we are all making mentally, it would be quite misleading to most people as to what our intentions are.

PROF. SYMONS: I wonder if we might just possibly clarify that, work into the wording some additional phrase like "where conditions and numbers justify"?

MR. PERRY: Something of that sort.

PROF. SYMONS: I think Harvey's point is very well taken.

PROF. McWHINNEY: Then it might be better to use something like "accept the



principle of establishing". You use the term "proceed to establish"; it might be better to use "accept the principle of establishing".

MR. PERRY: Poorly disposed, a headline writer could do wonders with that statement.

DEAN LEDERMAN: Are we contemplating this with the view of publishing it soon?

MR. PERRY: What are we now, a public body or private body?

THE CHAIRMAN: I want to ask your advice on a prior procedural question. This is taking the form of a resolution from the sub-committee to this Committee. First of all, there are eight of us present. Secondly, it was not on the formal agenda for to-day. I am conscious of the fact, therefore, that I should be a little circumspect in respect of those members who are not here and are not forewarned, one or two of whom may well have views although this subject is far from new.

I would like to see this Committee come to some resolution, whether it is a vote of fifteen to three or sixteen to one or whatever.

What would your advice be on the best procedural approach in these circumstances?

DEAN LEDERMAN: Is there an urgency



about this? Ought it to go through the Committee in the form of a resolution before September? Because if so, we are rather an attenuated group at this point.

PROF. McWHINNEY: If there is no urgency, we can certainly formalize it by agreeing to receive the report. That makes the report official and we could leave it to September, or some of our members might be unhappy.

THE CHAIRMAN: I have a feeling, in view of the interval of time involved. (let us just leave it at that) that it might be well not to leave the whole thing sitting that long.

I am in the process daily of offering advice of various kinds, part of which originates in this Committee or in its sub-committees. Therefore, I can convey whatever advice comes out of this Committee with whatever qualifications to the proper places.

DEAN LEDERMAN: I am prepared to say that I am in favour of this as it has been explained, and would vote for it when it was put to the full Committee, but we just don't have a full Committee at this moment.

PROF. McWHINNEY: Let us vote to receive it. I also privately would accept it as it stands without qualification.



DEAN LEDERMAN: I don't think it can be published as having passed through the whole Committee.

THE CHAIRMAN: To cover Harvey's point, we are certainly talking about private advice here, not talking about a public event here at all.

PROF. FOX: You are just receiving notice of a report from this sub-committee that you are going to get through some time, and this explains what you are going to get by way of conclusion that the sub-committee agrees to unanimously.

THE CHAIRMAN: If it would be helpful, I could say that this report had been received by such members of the Committee as were present at this time, and such members indicated (if I am using the right words, and correct me if I am not) complete support.

PROF. McWHINNEY: "Endorsement".

THE CHAIRMAN: "Endorsement" in this position. I would have to qualify it in indicating that this was not ----

PROF. FOX: I think you should.

DEAN LEDERMAN: In the private record, list who is here at this point.

THE CHAIRMAN: Yes, I think we should have a note on the record who was present at this point.



PROF. FOX: I suppose the sub-committee now sees the full Committee rising for the summer, and the committee report is going to go through, the sub-committee is in agreement; but it wants you to know that the sub-committee is in agreement at this point and this is the substance of what it is in agreement on.

Could I raise on other administrative point?

THE CHAIRMAN: In respect to this matter?

PROF. FOX: No.

MR. BEER: One thing, Mr. Chairman, to change the ending of this resolution, I am not sure if it was on the record.

PROF. BRADY: I will re-read it:-

"That the Province of Ontario, subject

"to study of the problems involved,

"establish the principle as soon as

"possible of bilingual secondary

"schools within the public system

"where the number of pupils warrants it"

PROF. McWHINNEY: And add something about "other conditions" - "number of students and other conditions warrant it".

DEAN LEDERMAN: I think that is the only condition we are contemplating, isn't it?

PROF. McWHINNEY: There may be such things as the desire of the local population.



PROF. BRADY: We referred, you see, to "study of the practical problems involved".

DEAN LEDERMAN: Those people who do not want it do not worry about it.

NOTE: The following members were present at this stage: Messrs. Macdonald, Perry, McWhinney, Lederman, Brady, Conway, Fox and Symons.

THE CHAIRMAN: Is there any other business?

MR. PERRY: My sub-committee can report, although not very much, I am afraid.

Having settled all the issues in the allocation of tax sources in our sub-committee, we have turned to other matters, and at the moment we are looking at a range of economic issues which seem to have constitutional aspects.

One in which the staff have done the most work so far is water resources and water pollution - mainly listing the alleged powers of the respective governments and the extent of feuding that goes on between them to define those powers.

We have nothing of substance to report or recommend, but I hope by September we will have a document to put forward.

As was recorded at the last meeting, I am going to try and resolve our problems with the national capital district with a memorandum during the summer some time.



PROF. FOX: With the one you are going to write?

MR. PERRY: Yes, whether my committee helps me or not, I don't know.

MR. STEVENSON: Mr. Chairman, in the light of the discussion earlier this week on further federal-provincial work on Carter, Smith and things like that, have you thought of dragooning the fiscal and economic sub-committee in for any of this?

THE CHAIRMAN: I think we might well be in touch with you, but I have some other thoughts in mind as well, and we will see.

Anything, Bill, that you wanted to say on the constitutional?

DEAN LEDERMAN: I have nothing to report, Mr. Chairman.

The constitutional sub-committee has not anything further it is dealing with at the moment. There are one or two papers still outstanding, which I think will come in during the summer, but we have no further plans at the moment, though we would rise to anything, I think, that we are asked to do.

THE CHAIRMAN: What is the Ron Watts prognosis?

DEAN LEDERMAN: I haven't been talking to him lately. He is getting rid of his students.



THE CHAIRMAN: Wasn't he shooting for last September?

DEAN LEDERMAN: Yes, he was.

MR. BEER: End of April.

MR. STEVENSON: I saw him last week. He said: "Won't take much longer now".

PROF. McWHINNEY: His sense of timing fits in with Kingston and these rural retreats.

THE CHAIRMAN: He is working on the Senate.

DEAN LEDERMAN: Comparative study of second chambers.

THE CHAIRMAN: It is rather a timeless subject.

PROF. SYMONS: He is moving at rather an appropriate pace.

THE CHAIRMAN: He has obviously got involved in the mood of the thing.

DEAN LEDERMAN: As soon as Donald Creighton sees this, he will do his paper on the Senate, and I think these two things are outstanding items on the agenda we drew up some time ago.

PROF. FOX: I think we should move a vote of confidence in Bill Lederman for completing his paper on Bill of Rights - a splendid example.



PROF. McWHINNEY: On its succinctness too - splendid example.

THE CHAIRMAN: And it is going to be very useful for July 5th.

PROF. McWHINNEY: It is a private meeting again at Kingston according to Paul Fox's formula, for the purpose of the press and also expense claims; it is private and not official?

THE CHAIRMAN: Yes. Any other matters? We will see you then in the next outing in June and on September 15th.

-----The meeting concluded at 4.45 p.m.

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